SUPREME COURT OF THE UNITED STATES.

Nos. 43 and 44.

JOHN RANDEL, Jr., APPELLANT,

vs.

WILLIAM LINN BROWN.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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Pleas before the honorable the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, of April S., 1837.—No. 1.

JOHN RANDEL, Jr.
vs.
WILLIAM LINN BROWN. } In equity.

To the honorable the judges of the court aforesaid, humbly complaining, showeth unto your honor, your orator, John Randel, junior, a citizen of the State of Delaware, and resident therein:

That your orator was the holder of a number of certificates of funded debt of the Chesapeake and Delaware Canal Company, entitled to priority of payment, and transferable; which certificates, respectively, bore upon their face acknowledgments that there is due from said company to your orator, or his assigns, the sum of money set forth in each certificate, bearing interest at six per cent. per annum, from the first day of July, 1836, inclusive, payable semi-annually at the company's office, on the first days of January and July, in each year. Your orator was desirous of negotiating a loan from one of the banks in the city of Philadelphia, and hoped to do so by depositing as collateral security, such of the said certificates as might be sufficient to protect the lender from loss, giving at the same time his promissary note in the customary form. Your orator stated his desire as above mentioned, to William Linn Brown, a citizen of the State of Pennsylvania, and resident therein; and the said William Linn Brown stated in reply, that he had transacted business with the Schuylkill Bank, and that his cousin, Frederick Brown, was a director of that institution, and he would try what he could do for your orator. Your orator expressed a wish that he would do so, while your orator was himself making an effort at the other banks. Soon afterwards, the said William Linn Brown informed your orator, that he had made the inquiries proposed, and that he understood that money was then much in demand, and he had not received much encouragement from his cousin, and feared he could not succeed. Your orator said to him, that he would give five hundred dollars if he could effect a loan for a twelvemonth, as he had ascertained and believed he could not borrow the money on more favorable terms; the said Brown and your orator then agreed, that as your orator was offering a premium, it was better that he should not appear in the transaction; and the said Brown said, "I will negotiate it in my own name, upon the hypothecation of your certificates." Your orator assented to that suggestion, and they parted, with an understanding to that effect. Your orator soon afterwards learned from the said William Linn Brown, that he had drawn a note for ten thousand dollars, payable at twelve months,

and that he had placed at the foot of it a memorandum, that it was to be secured by certificates of the debt from the Chesapeake and Delaware Canal Company to your orator.

Your orator observed, that it would be well to add, that a power of attorney would be given to sell or transfer the certificates, which would enable the bank at once to draw the interest to meet the note. These interviews took place in the city of Philadelphia. On Saturday, the twenty-second day of October instant, (which was within two or three days of the time of the last abovementioned interview) the said William Linn Brown came to the house of your orator in Wilmington, and stated, that he had prepared a new note according to the form above stated; that it had been presented and thrown out; and that it would be presented again, and would have its regular turn in priority at the next ensuing discount day, Tuesday, (Monday being the presenting day,) and it would be proper for him to have the certificates, and a power of attorney authorizing a transfer, in order to give it its best chance, as the mere note might not be sufficient to exhibit. Your orator assented. They went together to the office of a notary, who was absent from home. The said Brown then desired your orator to have the power prepared, and to execute it while he was gone to New Castle, for which place he was then departing, expecting as he said, to return in the evening; he returned in the evening, and spent a considerable time at the house of your orator; during part of that time there was company in the house, and the arrangement was not made between your orator and himself until a late hour, when the company had left the house.

Your orator then gave him two certificates of the character above described, of five thousand dollars each, and the power of attorney, which had been executed agreeably to his request aforesaid; and your orator handed him a blank form of a power of attorney similar to the one which had been filled, requesting him to fill it up as a copy, and write upon it a receipt for the power and certificates. The form of receipt was handed by your orator to him, and he wrote it, as your orator believes, on the back of the blank power, which he also partially filled up. The form of receipt which your orator handed to him, and which he appeared to copy, and as your orator believes, actually did copy, was in the following words:

"Received from John Randel, junior, certificates of dollars each, of the stock of the Chesapeake and Delaware Canal Company, dated which certificates have been deposited with me as collateral security for the payment of his note, dated this day, at months, with interest in my favor, and which certificates of stock I hereby engage to return him on the punctual payment of said note and interest, and to account to him for the dividends I may have received on said certificates while in my possession."

Your orator believes the blanks in the said form were filled up by the said Brown when he made the writing on the back of the form of the power of attorney. Before he went away, your orator observed, that he had not filled up all the blanks in the copy of the power of attorney; he said he was in a hurry to go; it was a late hour, and he feared to keep Mrs. Levy up too late, at whose house he was to lodge. Your orator desired him to make a fair copy of the power of attorney, and to write a new receipt on the back of it; he said he had no other blank power of attorney. Your orator gave him another, and he said he would write a fair copy, and leave the receipt thus fairly written with your orator on his way to the steamboat in the morning. He took the receipt written as above mentioned, and the certificates, and the power of attorney, and the blank form, away with him. Before they parted, it was arranged that your orator should come to Philadelphia on the following Tuesday to know the fate of the application to the bank, and on its proving successful, to give him a note for ten thousand dollars in his favor, and a check for the premium of five hundred dollars, on receiving from him the ten thousand dollars cash from the bank. The said Brown did not call, as promised, the next morning, on his way to the steamboat. And your orator saw nothing more of him until he came to Philadelphia, on Tuesday, and then saw him at his office in Pine street, between two and three o'clock. The said Brown stated, "I have bad news to tell you, we have not succeeded at the bank. Friday is the next, or another discount day, but I do not know that it is, or but it is worth while to try again. The bank has a disposition to lend, but has not the means." Your orator asked him, why he had not called on Sunday morning? He replied, that he waited at the boat to meet your orator. Your orator told him that he had no errand at the boat; that as he (William Linn Brown) had to pass the house of your orator from Mrs. Levy's on his way to the boat, he was to leave the receipt as he passed. He did not deny that, but said it was late when he went to Mrs. Levy's, and the house was closed, and that he had gone to the tavern, and slept late in the morning, and had to hurry to the boat. Your orator then asked him for the receipt; he said he would not give it to your orator, and proceeded to say, "I wont give it to you—I mean to hold the certificates and power of attorney until you settle with me—I have now got you in my power." Your orator replied, "I have no settlement to make—I do not owe you any thing—I intended to make you a present, as a present, but I have nothing to pay you as a debt. I have always paid your travelling and tavern expenses when you were not at my own house, and let you have money when you wanted it, if I had it; and also loaned you money—I dont think I owe you any thing—I think I have paid you for all your services, but always intended to make you a handsome present." Your orator then asked him for a return of the certificates. He said he would not give them up;

that he meant to hold on to the certificates until your orator made him the present that he said your orator promised him. Your orator said, he did not know that he ever made him a promise, although it was always his intention to make him a present." He then said, "do you not remember passing some place," which he named, "that you promised to give me something handsome?" Your orator replied, that he did not recollect any promise, although he always intended to give him a present, or a handsome present, and still did so, as soon as he should get all his certificates from the company, and settle his debts. Your orator, on his again refusing, told him, that he would immediately institute a suit against him, and compel him to deliver up the certificates, and then left him. Your orator, accompanied by Gerard Ralston, proceeded to the canal office in the afternoon of the same day with a notice, of which a copy is hereunto annexed, marked (Exhibit A,) but not finding the president at the office, a note was written to him, in which it was inclosed. And the next morning, between nine and ten o'clock, Mr. Ralston and your orator again called at the canal office, and there learned from the president, that he had received the notice, and that William Linn Brown had made a transfer of the certificates at the office on the preceding Monday, and caused new certificates to be made in his own name; and these were signed by the president at an early office hour of Tuesday morning. The president of the company also stated, that as the certificates were transferable on the face of them, he could not prevent, or did not feel authorized to prevent a transfer, if any person should present himself for the purpose, but that he would show the notice to such person.

Your orator further shews, that he has not received from the said William Linn Brown, either certificates, or power of attorney, or receipt. He called at the said William Linn Brown's office, both on Tuesday evening and Wednesday morning, but he was denied.

Your orator charges the said proceedings of the said William Linn Brown as fraudulent proceedings, and as a direct breach of trust. Your orator is, in no respect, indebted to him, that he knows of. He has never been called upon to pay any debt to him, nor has he presented any account, or made any claim, except such as has been paid. Your orator has frequently employed the said William Linn Brown, in the course of his business, principally in copying law papers. Your orator has, as he firmly believes, paid him full compensation for all that he has done.

The said William Linn Brown and your orator have been for a considerable time in relations of friendly intercourse; and the deposite of the certificates of stock, which has been mentioned above, was made in the hands of the said William Linn Brown merely as a trustee for your orator, and in the full trust and reliance that no use whatever would be made of it by the said William Linn Brown, but for the purpose of procuring the said loan at the Schuylkill

bank in perfect good faith; and that, on failing to negotiate the said loan, the said certificates and power of attorney would have been returned to your orator, as in good faith and conscience they ought to have been, and as your orator charges that the said William Linn Brown was in equity and good conscience bound to do, and as your orator required at his hands.

But now so it is, may it please your honors, that the said William Linn Brown, combining and confederating with the Chesapeake and Delaware Canal Company, and others to your orator unknown, (but whom, when known, he prays may be made parties to this bill, and he also prays that the said William Linn Brown may be made a defendant thereto,) hath denied that he is liable or bound to return the said certificates, and power of attorney, and receipt, and hath refused to do so; and hath alleged that your orator is bound to make him a present, and holds the said certificates to compel your orator to make such alleged present; which your orator denies that he is bound to do. All which actings and doings are contrary to equity and good conscience; and your orator firmly believes, and so charges, that it is the intention of the said William Linn Brown to make a further transfer of the said certificates; and that he will do so, unless prevented by the authority of this honorable court.

To the end, therefore, that your orator may have relief in the premises, and for as much as no plain, adequate, and complete remedy can be had at common law, and is to be sought only in a court of equity, without the aid of which he is remediless in the premises; and that the said William Linn Brown may true, full, and perfect answers make to the premises, and especially whether he did not receive the certificates and power of attorney in trust and confidence, in the manner, and under the circumstances aforesaid; and whether he had any interest in the same, and was not, in holding the same, a mere trustee for your orator, and did not refuse to deliver them to your orator; and whether he did not transfer the said certificates to himself, on Monday, the 24th day of October; and whether he ever placed the certificates before the directors of the Schuylkill bank; and whether any application was made to the said bank on Monday the 24th, or Tuesday the 25th of October, and what circumstances occurred before the board of directors, or were communicated to him; and whether he did not inform your orator that he had not succeeded at the bank, and give your orator to believe that he had made application on that or the preceding [day;] and whether the said certificates were not transferred to said William Linn Brown for his own purposes, and not for the uses and purposes of your orator; and what use or disposition (if any) he has made thereof, and to whom, and for what consideration.

And that the said William Linn Brown may be compelled, by the decree of this honorable court, to deliver up to your orator the said certificates and power of attorney, or to transfer the said certificates

to your orator on the books of the said company, and to restore to the said Chesapeake and Delaware Canal Company the certificates so fraudulently obtained by him from the said company. And that the said William Linn Brown may be restrained, by the injunction of this honorable court, from selling or transferring, except to your orator, the certificates received by him from the Chesapeake and Delaware Canal Company, as aforesaid; and that the said Chesapeake and Delaware Canal Company may be restrained from permitting any sale or transfer, except to your orator; and that your orator may have such further and other relief in the premises as the nature and circumstances of the case may require, and to your honors shall seem meet. May it please your honors to grant to your orator the United States writ of subpœna, to be directed to the said William Linn Brown, and to the said Chesapeake and Delaware Canal Company, commanding him and them at a certain day, and under a certain pain, therein to be limited, to be and appear before your honors in this honorable court, and then and there to perform, stand to, and abide, such further order, direction, and decree, as to your honors shall seem meet; and in the meantime to restrain the said William Linn Brown from transferring, and the said Chesapeake and Delaware Canal Company from permitting the transfer of the certificates of funded debt of the Chesapeake and Delaware Canal Company aforesaid, except to your orator. And your orator will ever pray, &c.

J. R. INGERSOLL,
For the Complainant.

John Randel, junior, being duly sworn according to law, says, that the facts set forth upon his own knowledge in the foregoing bill are true, and the facts set forth upon the information of others are true, to the best of his knowledge, judgment, and belief. That the defendant, William Linn Brown, did receive the certificates of debt mentioned, and the other documents, from deponent, in the manner set forth in the bill, and has refused to restore the same to the deponent, who apprehends and firmly believes that he will, unless restrained by the injunction of this court, make a farther transfer of the said certificates; and that, unless the said injunction be granted, the deponent will be without remedy, and will sustain an irreparable loss, by reason and means of the said farther transfer.

JOHN RANDEL, Jun'r.

Sworn and subscribed, the 29th day of October, 1836, in open circuit court.

FRA. HOPKINSON,
Clerk Circuit Court.

John Randel, junior, the complainant in the foregoing bill, being duly sworn according to law, says, he is in truth and in fact the

owner and holder of certain certificates of debt of the Chesapeake and Delaware Canal Company, and was so at the time he entered into an arrangement with William Linn Brown, the defendant. That he did enter into such arrangement about the middle of the present month of October. That the said William Linn Brown agreed to conduct a negotiation for a loan of ten thousand dollars from the Schuylkill bank, for the deponent, and received two certificates of debt, of five thousand dollars each, for the purpose of effecting the same; and also received a power of attorney authorizing a transfer of the same. That he has used the said power to transfer the said certificates to himself, without effecting the said loan, and has refused to return the same to the deponent, and has told him that he meant to hold the certificates and power of attorney until he (the deponent) should make a settlement with him; and afterwards said, until your orator made him a present, declaring at the same time that he had the deponent in his power.

The deponent further swears, that he is unconscious of owing any money whatever to the said William Linn Brown. That he is always been, and still is, ready and willing to come to a full and satisfactory settlement with him, although he never has been called upon or required so to do. The deponent firmly believes that the said William Linn Brown will make a further transfer of the certificates now held in his own name, unless prevented from doing so by the injunction of this court, and that in such case the deponent will suffer irreparable injury and loss.

JOHN RANDEL, Jun'r.

Sworn in open circuit court, October 29, 1836.

FRA. HOPKINSON,
Clerk Circuit Court.

The answer of William Linn Brown, the defendant named to the bill of complaint of John Randel, junior, a citizen of the State of Delaware, complainant.

This defendant, reserving to himself all and all manner of exceptions to the said complainant's bill, and by protestation not confessing or acknowledging all or any of the matters or things in the said complainant's bill to be true, in matter and form as the same are set forth and alleged, answers thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering, says: That your respondent, so early as the spring of 1831, at the instance and request of the complainant, engaged in the service of the said complainant, and particularly in a certain suit at law which was depending in the State of Delaware, in which the said complainant was plaintiff, and the Chesapeake and Delaware Canal Company were defendants; and that, in the prosecution of the suit, it became necessary that the respondent should frequently travel from

his home, in the city of Philadelphia, to New Castle and Dover, in the State of Delaware; and in consequence of the absence at Washington, D. C., of the principal counsel in the said suit, to wit, John M. Clayton, of Dover, it became necessary to visit Washington, and consult with and assist the said counsel in the preparation of the extensive pleadings in the cause, and to be absent often, and for considerable periods of time, from his home at New Castle, in the preparation of voluminous interrogatories for the numerous witnesses examined in said suit; and in addition to these duties, assisted in the preparation of papers of great extent and importance connected with said suit. Your respondent avers, that he attended diligently, faithfully, laboriously, and with his utmost intelligence, to these services, and others which *was* imposed upon him by the said complainant, from the early part of 1831 down to the period of the final settlement between the said complainant and the Chesapeake and Delaware Canal Company, to wit, the 19th day of April, 1836. That this business, though professedly confined to the said suit, was diffused, and included a great variety of objects in which the said complainant was engaged; and that his (the respondent's) whole time was entirely at the command of the said complainant during the period stated, and that a large portion of it was actually occupied in a laborious devotion to his service; and that at a moment's warning he held himself in readiness to go to Dover and New Castle, Washington city, and wherever his services might be required.

Your respondent further shows to your honors, that soon after he embarked in the concerns of the said complainant, the said complainant told your respondent that he found the value of his services to him would be great, and said, that if he would devote his time and talents to his, the complainant's interests in his suit with the Delaware and Chesapeake Canal Company, he would pay him a reasonable compensation for time actually bestowed in his service in any event; that he would bear the respondent's travelling and other expenses during his absence from the city of Philadelphia, and that in the event of success, he, the said complainant, would pay the respondent in addition to this certain compensation two and a half per cent. on the sum received in the said suit, instituted as aforesaid by the said complainant, against the said the Chesapeake and Delaware Canal Company.

And your respondent further says, that after an arduous trial of the said suit of nearly three months duration, at which trial he was present and assisted in a great variety of ways, and in which hundreds of pages of testimony, which he had aided in preparing for the said complainant, were read, a verdict was obtained and rendered in favor of the said complainant in the sum of $226,385 84 cents, which verdict, however, was in no wise recoverable against the defendants except through the medium of attachments for tolls, against those who passed through the Chesapeake and Delaware

Canal. And your respondent, therefore, was obliged to be on the canal in superintending this business for weeks together, to the great injury of his health, and at the risk of his life. This unpleasant business was terminated by an arrangement and settlement upon the basis of the judgment, between the said complainant and the said the Chesapeake and Delaware Canal Company, by which arrangement and settlement, the latter agreed to issue certificates of funded debt entitled to priority of payment to the said complainant, as the said complainant has truly stated in the first paragraph of his said bill, to the amount of the judgment obtained together, with interest, deducting a certain bond due by the said complainant to the said company, with interest thereon, to wit: the amount of $230,000.

And your respondent further says, that after the recovery of the before mentioned judgment, and before the settlement made as aforesaid by the said complainant, with the said Chesapeake and Delaware Canal Company, while it was yet uncertain whether any thing would be realized from the said judgment; your respondent being so sick from his exposures in the service of the said complainant that it was by no means certain that he would live, asked the said complainant to pay him for the *time* that he had spent in his service, and the request being urgently and repeatedly made, the complainant caused to be assigned to respondent's use the sum of $2000, upon the docket of the superior court of the State of Delaware, part of the said judgment which had been obtained by the said complainant against the said the Chesapeake and Delaware Canal Company, in payment up to that period of the *time* expended by your respondent in the service of the complainant, under the before mentioned agreement between the said complainant and the respondent.

And your respondent further says, that the said complainant being largely indebted to one William H. Camac, of the city of Philadelphia, some time after the said assignment of the $2000 to your respondent, came to your respondent one day, to wit: about the month of September, in the year 1834, and desired him to accept an order drawn by the complainant on the respondent in favor of the said William H. Camac, for the sum of two thousand dollars, the said complainant promising at the same time to place funds in the hands of your respondent to pay and take up the said order; and the respondent relying upon the honor and good faith of the said complainant, did afterwards accept an order or draft drawn by the said complainant according to the agreement, a copy of which said order, marked A, is hereto annexed, by which acceptance your respondent became bound to pay to the said William H. Camac, the sum of two thousand dollars specified therein, and which sum your respondent still is liable and bound to pay.

And your respondent further says, that on the 18th day of April, 1836, the said complainant gave to your respondent in pay-

ment to him *for time* expended in his services from the assignment of the $2000, part of the judgment aforesaid to the date last mentioned, altogether independently of the contingent per cent. dependant upon the result of the said suit before referred to, a certain promissary note for $300, payable to the order of your respondent in 90 days after the date; a copy of which note, marked B, is hereto annexed, and which he prays may be taken as part of his answer to the bill of the said complainant.

And your respondent further says that he procured a discount of the said note at the Schuylkill Bank, in the full expectation that it would be paid at maturity by the said complainant, but that the said note was not paid by the said complainant, nor any part thereof, and your respondent was obliged to effect an arrangement with the said bank to pay it by instalments, which payments he made, and the said note is in possession of your respondent, a debt against the said complainant, which debt the said complainant has wholly neglected and omitted to pay to the present time.

And your respondent further showeth, that afterwards, to wit: in the city of Philadelphia, on the 20th day of October, A. D. 1836, at his office in Pine street, after a settlement had been made between the complainant and the Chesapeake and Delaware Canal Company, the respondent said to the complainant, that a settlement having been effected with the Chesapeake and Delaware Canal Company, and the payment of the verdict thereby secured, it was proper that there should be a settlement between themselves, meaning between the complainant and respondent; urging, at the same time, that he had patiently waited and laboriously used every means in his power to bring about so important a result. The complainant then took from his pocket two certificates of the funded debt aforesaid, each for $5,000, and handed them to respondent, which upon respondent asking what they were for, the complainant replied that "they are to pay you (meaning the respondent) and Mr. Camac," adding that he wanted the respondent to go to Newcastle and re-assign the judgment marked to his (respondent's) use, and at the same time he (the said complainant) would execute to the respondent a power of attorney to transfer the stocks to himself, (the said respondent.)

Your respondent replied that he (meaning the said complainant) had other debts in Philadelphia which he hoped he would provide for, and particularly instanced a note which he had given to C. J. Ingersoll, Esq., for $800, which had been several times renewed, (and which, your respondent has understood, has since been under protest for non-payment,) and asked the said complainant whether he would not make provision for the payment of a part of these debts. The said complainant answered that the two debts which weighed most heavily upon him were his own (meaning the respondent) and Mr. Camac's, and that as to the said Mr. Ingersoll and others they might wait. Upon receiving this answer, your res-

pondent said that he would re-assign the judgment upon the records of the court in Delaware upon obtaining the power of attorney, and would appropriate the amount of the certificates as the said complainant desired, first in the payment of $2,000 to Mr. Camac, a sum which he was already bound to pay, with interest thereon, and the balance of the amount of the two certificates as a payment to himself, (the respondent.) At that interview no further conversation took place respecting the said certificates.

And your respondent further showeth, that in compliance with his said agreement so to do, he went to Newcastle, in the State of Delaware, and there re-assigned, on the records of the Superior Court of the State of Delaware, to the said complainant that part of the judgment, to wit: $2,000, with interest, which had been assigned as a payment to him, an exemplification of which assignment and re-assignment, under the seal of the said court, is hereto annexed, marked C, and which your respondent prays may be taken as part of his answer to the said complainant's bill of complaint.

And your respondent further showeth, that on the same day with the re-assignment of the said $2,000, part of the said judgment, and as a part consideration therefor, the said complainant executed a power of attorney to your respondent to transfer to himself, or any other persons, the two certificates of funded debt, numbered, as aforesaid, 34 and 35, each for $5,000; a copy of which said power of attorney, hereto annexed, marked D, your respondent prays may be taken as part of his answer to the said complainant's bill of complaint.

And your respondent further answering the complainant's said bill of complaint, says, that true it is he has, under the said power of attorney, transferred to himself the said certificates of funded debt, as he was entitled to do, for himself, individually, and for no other use or purpose whatsoever, the said certificates and power of attorney having been expressly given to him, not in trust, as is falsely stated by said complainant, but absolutely as a payment to himself for a debt due and ascertained from the said complainant to the said respondent, and to place him in funds for the payment of the said order of the said complainant for $2,000, with interest, which order the respondent had accepted in favor of William H. Camac, as aforesaid.

And your respondent further says, that he has not paid the said order in favor of William H. Camac as aforesaid, as he has been desirous to do, because he has been prevented by the institution of this suit, and by a notice which the said complainant has given to the Chesapeake and Delaware canal company not to permit a transfer of the said funded debt, or any part thereof, to be made by the said respondent, to any other person; thus preventing your respondent from raising the amount of the said order, or any part thereof, to pay a sum of money for which he is directly responsible.

And your respondent further saith and avers, that before and at the time of the transfer of the said two certificates of funded debt, each for $5,000, the said complainant was indebted to the said respondent a much larger amount than the amount of the certificates aforesaid. He was indebted to the respondent in the sum of $2,000, liquidated and ascertained as the amount due for respondent's *time* at the time of the assignment of an interest in the before mentioned judgment, to wit: on the 18th day of September, 1834, together with interest from that date; he was indebted to respondent in the sum of $300, the amount of the said note before referred to, with interest from maturity, to wit: from the 17th day of July, A. D. 1836; he was indebted to respondent in the sum of $5,750, being 2½ per cent. on $230,000, the amount or sum recovered by the said complainant on a settlement with the said the Chesapeake and Delaware Canal Company; and he was indebted to respondent in the amount of his acceptance in favor of William H. Camac, together with interest, for which acceptance respondent is liable from the date of the acceptance. Besides these sums, which are liquidated and ascertained, the said complainant is indebted to the said respondent for the time since the date of the said note, the 18th day of April, 1836, to the 24th day of October, A. D. 1836, spent by respondent in his, said complainant's, service and some two or three hundred dollars for travelling expenses, paid by your respondent out of his own pocket while on business of the said complainant, which he has failed and wholly neglected to reimburse.

And your respondent further says, that the certificates of the funded debt paid by the said complainant as aforesaid had reference at the time only to the amount of the judgment to be re-assigned and to the two and a half per cent. agreed to be paid on the sum recovered in the suit aforesaid, and to the acceptance of the said order in favor of William H. Camac; your respondent expressly declares that the said certificates had not at the time, nor ever had, reference to any other part of the claim which he has against the said complainant, and that the said certificates were not handed, transferred, or received as a payment in full of these three items of his claim against the said complainant, but only as a payment, *pro tanto.*

And your respondent further answering the said complainant's bill of complaint, says, that true it is he did apply to his cousin Frederick Brown to procure a loan of money, for the said complainant, at the time and times mentioned by the said complainant, as he had often done to others during the last four years, and long before a settlement was made with the said canal company, and the said certificates of debt were issued; and he never made these efforts except at the urgent solicitations of the complainant, who was so much straitened for money during the progress of his suit with the said canal company; that he did not pay your respondent any thing during a period of five years more than about one hundred dollars, except for his travelling expenses, the whole of which he was unable

to pay; and your respondent felt so much sympathy for his situation that he declined to ask him for money or security until after the judgment was obtained, and his friends were apprehensive of his death as aforesaid, but, confiding in his integrity and honor, believed that he would sacredly keep his engagements with your respondent when the time arrived that he would be able to fulfil them.

And your respondent further says, that true it is the said respondent drew his note for $10,000, stating at the foot thereof that the same amount of the funded debt of the said the Chesapeake and Delaware Canal Company would be offered as collateral security in case a loan could be effected upon it, and handed the same to his cousin Frederick Brown, by the direction of the said complainant; but it is not true, as falsely stated by the said complainant, that his cousin was to receive from the said complainant five hundred dollars, in case he succeeded in obtaining said loan, he having refused to receive any compensation whatever, and the said complainant was so informed by the said respondent; and it is not true, as falsely stated by the said complainant, that he requested the respondent to offer, or that the respondent did offer, the said note for discount, at the Schuylkill bank, or at any other bank, or that the respondent informed him that he had done so. Neither is it true, as falsely stated by the said complainant, that the respondent told him he had better not appear in the matter, or that he, the respondent, proposed to draw the said note of $10,000, as above stated; but he was solicited so to do by the said complainant, giving as his reason at the time for requesting your respondent so to do, and to place at the foot of it in writing that a loan upon it would be secured by a like amount of the funded debt aforesaid entitled to priority of payment, that he had had some words or a quarrel with the president of the said canal company, (Mr. Stacey,) about some question of payment of costs, and that he the said complainant did not care to go again to the said canal office of the said company to get the respondent a certificate or certificates to hand to his cousin Frederick Brown; but in case a loan could be effected, he would then get your respondent to go to the said canal company's office for him, and obtain a certificate or certificates of the said funded debt to the amount of the money borrowed as the security for the same. And it is totally and entirely untrue, that the matter of the above loan had any connexion with the said two certificates of the funded debt of the Chesapeake and Delaware Canal Company, numbered 34 and 35, then in the possession of your respondent, but it was understood and expressly agreed that a loan, if effected by the said Frederick Brown, was to be secured by another certificate, or other certificates, of the said funded debt, to be obtained by the said complainant as stated above, to the amount of money borrowed, and not by the two certificates, Nos. 34 and 35, which were the absolute and unqualified property of your respondent.

And your respondent further showeth, that after the delivery of the said certificates Nos. 34 and 35, and the execution of the said

power of attorney, for their transfer, no further allusion was made, directly nor indirectly, by the said complainant, to these certificates of loan or funded debt, nor to the balance due to your respondent, either by your respondent or the said complainant, until the said complainant, upon a visit to your respondent, in Philadelphia, said he intended to go to Georgia, and expected to remain there six months; and asked the respondent whether he had attended to a request which he had made as to the purchase of a large piece of vacant ground. Your respondent then asked the said complainant whether he had paid all his creditors in Philadelphia and Delaware, and complainant replied he had not paid them, and they might wait. Your respondent then promptly told him he had no desire to be instrumental in purchasing property for the said complainant while he had debts of a large amount still unpaid, and reminded him of having received $15,000 in cash during the previous summer. And your respondent, feeling that sincerity and truth were required of him, took occasion to observe that as he, the complainant, had received so much cash, and obtained a large verdict, secured by good stock in the Chesapeake and Delaware Canal Company, which was entitled to priority of payment, a golden opportunity was presented which enabled him to triumph over his enemies and show that the charges against him, of faithlessness and looseness in the observance of his engagements, were malicious and unfounded. The said complainant then, with great asperity, and for the first time, asked your respondent why he had not given him a receipt for the certificates of funded debt which he had received. To which question your respondent [said] that he was ready to do so, but he had never before been requested.

The complainant then wished your respondent to fill up a blank power of attorney, which he drew from his pocket, to be kept as a copy of the one the said respondent had executed, and endorse upon it a receipt, binding respondent not to pass the certificates out of complainant's name; stating, at the same time, that he had determined not to lose the control of them, nor the power of redemption, if he chose to do so; adding, respondent thinks, that he had required the same thing of other persons.

Your respondent peremptorily declined, alleging that the said complainant, on passing them to him, had parted with all control over them; that he, respondent, had received them without limitation, to pay himself and Mr. Camac; that he was responsible to the latter gentleman in $2,000, with interest; and that he had re-assigned the judgment, and that the whole amount of his own debt was due; and as complainant was able to pay it, there was no reason why he should not pay.

The said complainant, with much sharpness and temper, said, if he would not sign such a receipt, he would compel him. And getting still more excited, he struck his clenched hands violently upon the table and exclaimed, "*I need not have paid you one dollar.*

You have no proof that I owed it to you. I will yet force you to prove it, and get back the certificates."

Your respondent said, that he considered the transfer to him as absolute; that he would do with them what he pleased, and would give him a proper receipt, and no other, and express in said receipt that it was in part payment of respondent's debt. The said complainant then rose from his seat, and placing himself in a threatening attitude, with clenched hands, said, "I demand those certificates." Your respondent replied, also rising, that he would not give them to him, nor would he be *bullied* out of his rights by threats, or any other mode of intimidation; that he had given them to him for good and valuable consideration; that the property had changed ownership, and it was too late to recall it. The said complainant then said, still with clenched hands, and with the utmost fury of manner, "*Now I say I never owed you a dollar. I will commence a suit against you, and make you prove it, and compel you to give up the certificates, or words to that effect.*" Your respondent answered that he might do as he saw fit, and that for his (respondent's) part he declined any further connexion with him, and would stand on his rights. The said complainant then left respondent's office, declaring that he should never receive one dollar from him if he could prevent it; and in going out drew the door after him with much violence. This was the last interview your respondent had with the said complainant.

Your respondent further says, that in no conversation that he ever had with the said complainant, was it said by the respondent to complainant, "I mean to hold the certificates and power of attorney until you settle with me—I have now got you in my power," or words conveying a similar meaning; nor did the said complainant ever, to respondent's knowledge or belief, promise a present, or handsome present, or any thing of the sort to the said respondent; nor did the said respondent ever say to the said complainant, as he falsely asserts in his bill of complaint, "Do you not remember promising to give me something handsome," or words to that effect. Your respondent solemnly avers that he has never expected a present from the said complainant, and that, so far from soliciting a donation of any kind or description from the said complainant, he labored faithfully and laboriously for days and nights, during a series of years, for the said complainant, upon the faith of his promise to pay him, as already set forth, but without murmuring at the delay of payment until every obstacle was removed.

Your respondent, answering the particular interrogatories in the said bill of complaint mentioned, says, that he did not receive the said certificates and power of attorney in trust and confidence, in the manner, and under the circumstances therein set forth, but absolutely as an unqualified transfer in payment of a debt due to him by said complainant, and distinctly admitted by him, and to enable him, the said respondent, to pay William H. Camac the amount of

his (respondent's) acceptance, as before stated; and that said respondent has an absolute and unqualified interest in the certificates, to the whole amount of their principal and interest; and that he does not hold them as a trustee for the said complainant, nor any other person or persons, but in his own right, and for his own use.

And your respondent further answering, says, that he did refuse to deliver the said certificates to the said complainant, and did actually transfer the said certificates to himself on Monday, the 24th day of October last; and that he did not place the said certificates before the directors of the Schuylkill bank on Monday the 24th, or Tuesday the 25th of October last, but that he stated in writing at the foot of his (respondent's) note for $10,000, as aforesaid, that such would be the security for a loan, as he told his cousin, Frederick Brown, that such certificates (shewing him one of the certificates) would be issued, and as the funded debt was entitled to priority of payment, it was a good security; but he did not say to the directors of any bank, nor to Frederick Brown, that these said certificates, but like certificates, would secure the payment of the loan.

Your respondent does not know further than what he has stated, of circumstances which may have occurred before the board of directors of any bank, as nothing was communicated to him, except that such was the scarcity of money a loan could not be effected; which communication was made to respondent by his cousin Frederick Brown, and your respondent so informed the said complainant; nor did your respondent, as is falsely insinuated, give the said complainant to believe that he had made direct application at any bank whatever, as he did not make application, except as above stated. Nor did your respondent ever promise the said complainant to do more than ascertain by inquiry whether such a loan could be obtained, and if it could be obtained, then your respondent was to inform said complainant, and he was to furnish the requisite certificates; but it never was contemplated, either by respondent or complainant, that the note should be formally presented for discount until it was known, by preliminary information, that the note would be done; in which case, the promised certificates were to accompany the note.

And your respondent further answering, says, that touching the disposition which your respondent has made of the said certificates, he says, that they still stand in the name of your respondent, and were surrendered to this honorable court upon the presentation of the said complainant's bill of complaint; and this defendant denies all and all manner of unlawful combination and confederacy with the said Chesapeake and Delaware Canal Company, as he is in the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained, material or necessary for this defendant to answer, and not herein well and sufficiently answered, confessed, traversed and avoided, is true to the knowledge or belief of this defendant; all

which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. R. TYSON,
Solicitor of the Respondent, Wm. Linn Brown.

William Linn Brown being duly sworn, doth depose and say, that the facts set forth in his answer from his own knowledge are true, and what is stated to be from the information of others, he believes to be true.

WM. LINN BROWN.

Sworn and subscribed this 27th day of March, 1837, before
JOHN BINNS, *Ald'n.*

A.

To WILLIAM LINN BROWN, ESQ., *Philadelphia.*

Sir: Out of the sum of two thousand dollars with interest, due and to become due thereon, which was assigned at my request by Samuel H. Hodson to you, being one fifth part of the sum assigned by me to him on trust, the 27th January last, out of the judgment obtained by me against the Chesapeake and Delaware Canal Company, please pay to William M. Camac, or order, the sum of two thousand dollars out of the first moneys you obtain from said company on said account, or from tolls attached. If more than one year from this date shall elapse before you obtain the whole of said sum of $2,000, then pay to said Camac an interest of six per cent. on whatever balance may remain unpaid after the expiration of said term of one year, and charge the same to account of,

Your obedient servant,
JOHN RANDEL, JUN'R.

Dated at Philadelphia, September 26th, 1834.

Accepted. WILLIAM LINN BROWM.

B.

$300. *Philadelphia*, April 18, 1836.

Ninety days after date, I promise to pay to the order of William Linn Brown three hundred dollars, without defalcation, for value received.

JOHN RANDEL, JUN'R.

C.

JOHN RANDALL, JUN'R.
vs.
THE CHESAPEAKE AND DELAWARE CANAL CO.

You are hereby directed to endorse upon the record of the above suit for the use of William Linn Brown, the sum of two thousand

dollars, with the interest due and to become due thereon, being one-fifth part of the sum which was endorsed for my use in trust by the said plaintiff on the 27th day of January, 1834.

Witness my hand and seal at Smyrna, this 18th day of September, 1834.

L. H. HODSON. [L. S.]

Signed and sealed in presence of
J. GINN,
A. M. CLYMENT.

To CORNELIUS D. BLANEY, ESQ.

Prothonatory of the Superior Court, New Castle county.

The following is a copy of the assignment to Samuel H. Hodson, above referred to:

"I hereby assign and transfer to Samuel H. Hodson, cashier of the Bank of Smyrna, trustee, the further sum of ten thousand dollars, with interest from date, to be paid out of the amount of this judgment, dated 27 January, 1834."

(Signed.) JOHN RANDEL, JUN'R.

Before, C. D. BLANEY, *Proth'y.*

NEW CASTLE COUNTY, *ss:*

I, Cornelius D. Blaney, prothonotary of the superior court of the State of Delaware for the county aforesaid, do certify that the preceding page contains true copies of certain assignments made in the within stated case, and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at New Castle, the [L. S.] ninth day of December, in the year of our Lord one thousand eight hundred and thirty-six.

C. D. BLANEY, *Proth'y.*

The following is a copy of the re-assignment of $2,000 made by William Linn Brown to John Randel, Jun'r., with interest, as transferred and assigned to him by S. H. Hodson:

"October 22d, 1836. I do hereby re-assign and transfer back to John Randel, Jun'r., the above sum of $2,000 with interest.

(Signed.) WM. LINN BROWN.

Before, C. D. BLANEY, *Proth'y.*

NEW CASTLE COUNTY, *ss:*

I, Cornelius D. Blaney, prothonotary of the superior court of the State of Delaware for the county aforesaid, do certify that the above is a true copy of a re-assignment made by William Linn Brown on the record in my office of a judgment of John Randel, Jun'r., against the Chesapeake and Delaware Canal Company.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said court at New Castle, the ninth day of December, in the year of our Lord one thousand eight hundred and thirty-six.

C. D. BLANEY, *Proth'y.*

STATE OF DELAWARE, *ss:*

I, Thomas Clayton, chief justice of the State of Delaware, and as such, presiding judge of the superior court of the said State, do hereby certify that the above and foregoing two attestations by Cornelius D. Blaney, Esq., prothonotary of the said court for New Castle county, are in due form, and by the proper officer.

In testimony whereof, I have hereunto set my hand this ninth day of December, A. D. 1836.

THOMAS CLAYTON.

NEW CASTLE COUNTY, *ss:*

I, Cornelius D. Blaney, prothonotary of the superior court of the State of Delaware, in and for New Castle county, do hereby certify that the honorable Thomas Clayton, whose name is subscribed to the within certificate, was at the date thereof and now is chief justice of the State of Delaware, and as such, the presiding judge of the superior court of the said State duly commissioned and qualified.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed the seal of the said court at New Castle, December 9th, 1836.

C. D. BLANEY, *Proth'y.*

D.

Know all men by these presents, that I, John Randel, junior, of the city of Wilmington, in the State of Delaware, have, and do hereby make, constitute and appoint, William Linn Brown, of the city of Philadelphia, my true and lawful attorney for me, and in my name to sell, assign and transfer unto himself, or to any other person or persons, ten thousand dollars of the funded debt of the Chesapeake and Delaware Canal Company, entitled to priority of payment, and transferable according to certificates thereof numbered 34 and 35, each for five thousand dollars, and until such transfer, to receive and collect all the interest accrued or to accrue thereon, and to give all necessary and valid acquittances therefor, and for that purpose to make all necessary assignments, and execute assignments and transfers of the same, as fully and amply as I could do, being present; with power also, an attorney or attorneys under him for that purpose, to make and substitute, and to do all lawful acts requisite for effecting the premises; hereby ratifying and confirming all that my said attorney, or substitute or substitutes, shall do therein, or by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, the twenty-second day of October, in the year of our Lord one thousand eight hundred and thirty-six.

JOHN RANDEL, Jr. [L. S.]

Signed, sealed, and delivered, in the presence of
THOS. McDOWELL,
W. A. IRVING.

STATE OF DELAWARE, *ss:*

Be it known, that on the twenty-second day of October, one thousand eight hundred and thirty-six, before me, Thomas McDowell, Notary, &c., Public of the State of Delaware, duly commissioned and authorized, and residing in the city of Wilmington, personally came John Randel, jr., and acknowledged the above letter of attorney to be his act and deed for the purposes mentioned.

[L. S.] In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, the day and year aforesaid.

THOS. McDOWELL, *Not. Pub.*

I certify, that the within writing is a true copy of a power of attorney, now on file in the office of the Chesapeake and Delaware Canal *Canal* Company.

[L. S.] Witness my hand, and the seal of said company, dated this twenty-second day of October, 1839, Philadelphia.

PETER LESLEY, *Secretary.*

The replication of John Randel, junior, to the answer of William Linn Brown, defendant.

This repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto, saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, insufficient, and untrue; without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed and denied, is true; all which matters and things, this repliant is, and will be ready to aver and prove, as this honorable court shall direct; as humbly prays, as in and by his said bill he hath already prayed.

J. R. INGERSOLL,
For the Complainant.

Circuit Court United States.

JOHN RANDEL, junior, *vs.* WM. LINN BROWN. } In Equity.

Interrogatories for witnesses, who may be produced and examined, under a commission to Albany.

1. Do you know the parties above named, or either of them, and how long have you known them respectively.

2. Have you any knowledge of the services rendered, or employment attended to, by the defendant for the complainant? Of what did such services or employment consist? At what time or times were the services rendered, or employment attended to or performed?

3. Did or did not any arrangement or contract exist between the said parties under which any services were rendered, or employment attended to for the complainant, by the defendant? If so, was the arrangement in writing, or was it verbal? If in writing, annex the same to your answers to these interrogatories? If verbal, state the same fully, precisely, and at large, and all you know in relation thereto.

4. What compensation did the same defendant receive for his services from the complainant? Was he paid by the day, or by the particular services performed? What was the value of said services? Do you, or do you not know, that any other person was employed by the complainant, at or about the same time when the defendant was employed by him in a similar way? When was such other person or persons employed? What compensation did such other person or persons receive from the complainant? What was the usual and regular charges made, and compensation received, by persons who were employed for like duties and services, with those performed by the defendant for the complainant? At whose instance was the defendant employed by the complainant? Under what circumstances was he so employed? State all that you have heard the defendant say in relation thereto, before the month of November, 1836.

5. Have you or have you not before the month of November, 1836, heard the defendant say any thing in relation to his connexion with the complainant? Did he say that the complainant owed him any money? Did he say how much he owed him? Did or did he not speak of any claim, or supposed claim upon the complainant? Did he or did he not speak of his expectations from the complainant? Of what nature, description, and amount, did he state his claims and expectations to be? State particularly, and at large.

6. Did you or did you not, at any time during the last winter, hear the defendant state any thing on the subject of his receiving certificates of the Chesapeake and Delaware Canal Company from the complainant? For what purpose did he state that he received them? For what purpose did he state that he retained them? To what purpose did he state that he would apply them? State, as nearly as you can, the language used by the defendant, and all that he said upon the subject enquired of in this interrogatory.

7. Have you or have you not any knowledge whatever of any attempt of the defendant to procure money for the complainant, on a pledge of certificates of the Chesapeake and Delaware Canal Company, or of his having offered, undertaken, or engaged to make

such attempt? What did he do or say in relation thereto? Did he or did he not procure such money? Did he or did he not return the certificates to the complainant? What did he do with the certificates? What did he say that he intended to do with them?

8. Have you or have you not any knowledge of an arrangement to give the defendant the appearance of a judgment creditor of the complainant? For what purpose was that arrangement made? What took place in consequence or in pursuance of that arrangement? Did or did not the defendant make any explanation to you in relation to such arrangement? What was the explanation so given by him?

9. Do you or do you not know any thing further that may be material to the complainant? If so, set forth the same fully and at large, as if you had been more particularly interrogated thereto.

J. R. INGERSOLL, *for Complainant.*

May 20, 1837.

A true copy from the original filed.

FRA. HOPKINSON, *Clerk Circ't Ct.*

June 5, 1837.

Commissioners on the part of the complainant, at Albany:—Absalom Townsend, Peter Leton, Henry and Hermanus Bleecker, Esqs., or any one or more of them.

Circuit Court U. S., April Session, 1837, *No.* 1.

JOHN RANDEL, Junior, *vs.* WILLIAM LINN BROWN. } In Equity.

Cross interrogatories of defendant for witnesses who may be produced and examined under a commission to Albany, under a rule entered by complainant.

1. Did or did not the complainant employ the defendant in his business, and particularly in a suit of the complainant against the Chesapeake and Delaware Canal Company? Were or were not these services commenced at an early period—as early as the year 1831? Was or was not the defendant the adviser and ardent assistant of the said complainant, in preparing for the said cause? Did he or not often leave his home in the city of Philadelphia, to labor for and assist the said complainant? Have you or not received letters from the said defendant, giving you information in regard to the said suit, dated from New Castle and elsewhere? Were or not the services rendered by the said defendant valuable to the said complainant?

2. Did you or not understand that the defendant was to receive a compensation from the complainant, in the event of a successful termination of his suit against the Chesapeake and Delaware Canal Company? Did you or not understand this from the complainant,

and also from the defendant? Did or did not the complainant recover a large judgment against the said company? Did he or not obtain a settlement of the same with said company? Did or did not the defendant labor cheerfully, laboriously, and faithfully, and do all in his power to bring about so desirable a result? Did you ever hear the defendant say it was only a gift, present, or donation, he expected or was to receive from the said complainant? Were or not the expenses incurred by defendant in the service of the said complainant to be refunded by complainant? Was not defendant also to receive a reasonable compensation for the time actually employed in the complainant's service, whether successful in his suit or not? Have you or not ever heard the complainant acknowledge his obligation to pay the said defendant for his time actually employed, and for his expenses incurred, in the service of the said complainant? Do you or not remember that the said defendant informed you that he held a note of the said complainant? State what he said in relation thereto.

3. Did the said defendant, in any conversation with you, ever admit he had no verbal agreement with the said complainant for compensation for his services? Did the defendant express a willingness to receive from complainant a certificate or certificates of the funded debt, instead of money? State what he said in relation thereto. Did not the defendant accept your friendly mediation with said complainant, to induce said complainant not to delay any longer a settlement with defendant? Was it not also to avoid, on the part of the said defendant, a dispute or misunderstanding with complainant? Did not the defendant express to you his great repugnance to having any dispute with the said complainant? What did he say in connexion therewith?

4. Did not the defendant state to you, that he stood responsible, in an acceptance of complainant's order in favor of Mr. Camac, for a considerable amount? Did the defendant ever say to you, that he had no claim for the same against the complainant? Did or not the complainant say to you, that he felt grateful to the defendant for so usefully and warmly espousing his cause, and serving him in the same, and that he would exercise his liberality towards him, as well as compensate him handsomely? Did the defendant ever say to you, that his acceptance of your friendly mediation in his behalf, with the complainant, was, if unsuccessful, an abandonment on the part of the defendant, of any claims he had against the complainant, or a release of any liabilities the defendant stood under for the complainant? What was the result of your friendly mediation? Did or did not the complainant agree, and state as his design, to transfer or convey to the defendant a certificate or certificates of the funded debt? Did he, the complainant, or not express to you his intention to do so? Was or was not this some short time before the 20th of October, or first of November, eighteen hundred and thirty-six? Was it or not some short time after the conversation alluded

to above, between yourself and the defendant, when your friendly mediation was exercised? Did the complainant state the amount he intended to convey to the defendant?

5. Did you or not at any time during the last winter see the defendant? Did you or not at any time during the last winter hear from him in relation to his affairs with the complainant? Has the defendant ever explained to you the purposes for which two certificates of the funded debt of the Chesapeake and Delaware Canal Company were given to him by the complainant? Did you or not decline hearing explanations on the subject from the defendant? Have you or not heard statements in relation thereto from the complainant? Is or is not the knowledge you have in regard to the said certificates derived from the complainant? *Was* you or not present last October, when the complainant gave to the defendant two certificates of the funded debt of the Chesapeake and Delaware Canal Company? Have you or not any knowledge, from your own observation, of that transaction? Did you or not ever hear the defendant say, that any loan he was endeavoring to effect for the complainant, was to be secured upon the pledge of the two certificates transferred to his name?

6. *Was* you or not present at Delaware city in September, 1834? Have you or not any knowledge, personally, of the assignment of part of the judgment obtained by the said complainant, against the Chesapeake and Delaware Canal Company, to the use of the defendant? Have you or not any knowledge of the conditions of its acceptance by the defendant? Has the defendant or not ever stated to you the nature of that transaction, further than his having re-assigned it to the said complainant.

7. Are you or not a creditor of the complainant?

8. Do you or do you not know any thing further, that may be material to the defendant? If so, set forth the same fully and at large, as if you had been more particularly interrogated thereto.

Commissioners on the part of the defendant.

J. R. TYSON, *for Defendant.*

June 3, 1837.

A true copy from the original filed.

FRA. HOPKINSON, *Clerk Circuit Court.*

June 5, 1837.

[*a* 51] *Answer to interrogatory of the direct interrogatories.*

No. 1. I have known both the parties intimately, as friends, for more than fifteen years.

Answer No. 2. I have no personal knowledge of the matters stated in this interrogatory.

Answer to No. 3. I have no personal knowledge of the matters contained in this interrogatory.

Answer to No. 4. I have no personal knowledge of the matters contained in this interrogatory.

Answer to No. 5. In the year 1836, between the 20th and 23d days of September or thereabouts, being in Philadelphia, I had a conversation with the defendant, W. L. Brown, in relation to a remuneration which he expected from the complainant, J. Randel, jr., for his services in the suit at law which had been between said Randel and the Chesapeake and Delaware Canal Company; at the time, and from that conversation, I understood the defendant to say, in substance, that he was desirous of a settlement with Mr. Randel, and wished to know *how much* he (Randel) meant to give him, not that he wanted much of the amount in money, as certificates of the debt of the canal company to Randel would answer his purpose for the larger part of whatever sum he should receive, but he was very desirous, for a particular reason, (by which I presumed he referred to his approaching marriage,) to have the matter liquidated, that he might know what to depend upon in his financial arrangements; I further understood him, in this conversation, to
[*a* 52] speak of this remuneration, not as a legal demand or claim, by virtue of any stipulated sum he was to receive, but a claim by virtue of a promise of Mr. Randel's, that if he succeeded in his suit against the canal company, he would make him (Brown) a handsome present, as a reward for his assiduity and exertions in his cause. The defendant named no specific sum as expected by him.

Answer to 6th. I have not heard defendant say any thing on the matters contained in this interrogatory, nor do I know any thing in regard to them.

Answer to 7th. I have no knowledge respecting the matters contained in this interrogatory.

Answer to 8th. I have no knowledge respecting the matters contained in this interrogatory.

Answer to 9th. As a further explanation of my answer to interrogatory No. 5, in order to show how completely I understood the defendant to make no claim as a legal demand against the complainant, I would state, that I recollect distinctly remarking to the defendant, in substance, "that I was glad to understand that he put the matter upon that footing, (that is, on the ground of a handsome present for his services, and not as a legal right,) because, whilst I believed that Mr. Randel meant to reward the fidelity and exertions of his friends liberally, and particularly, because I had reason to think he intended to make him (Brown) a handsome return for his services; yet, I felt assured that he would never recognise, as a legal demand, any claim beyond the customary remuneration paid for services rendered. I further said, that as
[*a* 53] the matter now stood, I felt free to urge Mr. Randel to make some special effort to hasten a prompt settlement with him, of all he meant to do for him, and stated that I would, as soon as I saw Randel, which I expected to do in a few days, at Ithaca, press the matter upon his consideration.

A few days after this conversation I went to Ithaca, and having learned that Randel had returned to Wilmington, in Delaware, I did, in compliance with my offer to Mr. Brown, write him on the 14th of October, 1836, *write him* a letter containing the following remarks, which I insert here, to show what were my impressions then fresh in relation to this conversation. "Have you seen Linn Brown? I had a conversation with him on the subject of any thing you might see fit to do for him. Whilst he did not consider you under any indebtedness to him, I could see he expected something from your liberality, and that he was anxious to understand definitely from you what your intentions were, as he soon expected to be married, and wished to calculate his arrangements according to his means. I meant, if I saw you, to suggest to you, that it would be doing him a real service to make, before you go south, a definite arrangement with him."

In further answer to this interrogatory, I would say, that the conversation above alluded to, was one of which Mr. Randel had no knowledge or privity, and that the offer to press Mr. Brown's remuneration on him was entirely voluntary on my part.

[*a* 55] *Answer to Cross Interrogatories.*

Answer to 1st. I always understood from Mr. Randel, that the defendant was employed by him in the suit referred to, to assist his counsel and attorneys in preparing the testimony, in doing writing, and rendering a variety of important services in the suit and matters connected therewith. I do not know at what time those services commenced. I always considered the defendant as an ardent and zealous friend and assistant to Mr. Randel in the cause against the canal company, and believed him to have made great personal exertions in his service, beyond those which an ordinary hired clerk would have done. I have received several letters from Mr. Brown giving me information in regard to the suit, dated from New Castle, and elsewhere.

Answer to 2d. I always supposed from conversations held by me with both parties to this suit, that it was expected, in the event of Mr. Randel's success in his suit against the Chesapeake and Delaware Canal Company, that he would make Mr. Brown a handsome remuneration by way of gift, for his zealous exertions in that cause. The complainant did recover a large judgment, and obtain a settlement with the company.

I always understood that the defendant labored cheerfully, laboriously, and faithfully, in the complainant's service.
[*a* 55] I have heard defendant say, that he held a note of com-
[*o.b.c.*] plainant's, but do not recollect (if I ever knew) the circumstances connected with the note, nor its amount.

For further answer, I would refer to the answers given by me to the 5th and 9th direct interrogatories.

Answer to 3d. The defendant never either affirmed or denied to me the existence of a verbal agreement between him and com-

plainant. The defendant did accept my offer to speak to Mr. Randel, and in consequence, I wrote the letter referred to by me in my answer to the 9th direct interrogatory. My offer was accepted as likely to bring the matter to a prompt settlement between complainant and defendant. The defendant expressed himself as tired with waiting for a settlement of the matter between himself and Randel, and expressed great repugnance at the idea of a dispute or difficulty with Mr. Randel, but the peculiar reasons for such repugnance, if mentioned, I have forgotten.

Answer to 4th. The defendant has recently, that is, during the present year, 1837, mentioned to me, for the first time, the fact of his standing responsible to Mr. Camac as stated in this interrogatory. Defendant never said to me, that he had no claim for same against complainant.

The complainant always expressed himself grateful to the defendant for so usefully and warmly serving him in his cause, and said he would make Brown a handsome present if he succeeded in gaining his suit against the company, but always alleged [*a* 57] that he had paid defendant fully for his services and expenses. Complainant never made any remark about my friendly mediation. Complainant told me he had thought of conveying to the defendant whatever he meant to present him with in a certificate of the "funded debt," in case he could not raise money on his certificates as he then expected to do. This was said a day or two after the first steps had been taken in this suit. Complainant never mentioned to me the sum he proposed to give defendant.

Answer to 5th. I did not see defendant during last winter. The defendant has, this last April, said to me in general terms, that the two certificates referred to in this suit were put into his hands to pay Randel's debts. I declined hearing explanations from defendant, having had no explanation from complainant, except by reading the draft or copy of the bill of complaint in this cause, and being desirous, as a friend to both parties in this suit, to hear only such statements which must necessarily become legal evidence. I know nothing of the remaining matters inquired of in this interrogatory.

Answer to 6th. I have no knowledge respecting the matters contained in this interrogatory.

Answer to 7th. I am a creditor of complainant, but am amply secured.

Answer to 8th. I know nothing further that is material to the defendant. Any and all parts of the foregoing interrogatories which have not been answered directly or indirectly, are such matters, in relation to which I have no personal knowledge or recollection.

RICHARD VARICK DE WITT.

Richard V. De Witt, a witness produced before me at his own house, in Park Place, in the city of Albany and State of New York,

on the part of the complainant, (no other commissioner named in the annexed commission appearing,) and having been by me duly sworn to, and subscribed the oath hereto annexed, was duly examined, under the annexed commission, by me, on the eighth day of June, 1837, and then and there made the answers to the several direct and cross interrogatories (also thereto annexed) which are hereto annexed, no person being present.

ABSALOM TOWNSEND,
Commissioner.

JOHN RANDEL, Jr., vs. WM. LYNN BROWN. } In Equity.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person whomsoever, except to the clerk or clerks by you employed and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you as such commissioner by virtue of the said commission, until publication shall pass by rule or order of the above court.

ABSALOM TOWNSEND.

Sworn before me this 8th June, 1837.

CA. TEN EYCK,
Clerk of the city and county of Albany.

JOHN RANDEL, Jr. vs. WM. LYNN BROWN. } In Equity.

Circuit Court of the United States.

You shall true answer make to all such questions as shall be asked of you on the interrogatories in this cause, and hereto annexed, pending in above court, wherein John Randel, Jr., is complainant, and Wm. Lynn Brown is defendant, without favor or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

RICH'D VARICK DE WITT.

Sworn before me this 8th June, 1837.

ABSALOM TOWNSEND,
One of the commissioners named in annexed commission.

[Endorsed A 51 to A 58.]

JOHN RANDEL, Jr., vs. WM. LYNN BROWN. } In Equity.

Of April Session, 1837.—No. 1.

I respectfully report that the following depositions were taken before me, in the above case, on due notice to both parties.

WM. H. KEATING,
Examiner.

June 27, 1837.

[*a* 64] *Deposition of Benjamin A. Janvier.*

Examined by the complainant himself.

Benjamin A. Janvier, of Newcastle, in the State of Delaware, a witness adduced on the part of the complainant, aged twenty-nine, being duly sworn according to law, doth depose as follows:

I know the parties. I have known Mr. Randel for twelve years, at least. I knew him when on the canal. I have known Mr. Brown since the year 1832, probably. I know that Mr. Brown has been employed by Mr. Randel; has been attending to his business at different intervals, since the time I first became acquainted with him, until the fall of one thousand eight hundred and thirty-five, certain. Whether later I cannot say. I don't know exactly what Mr. Brown's duties were. I know that, while he was engaged, to my knowledge, he seemed to be very actively engaged for him, especially in the law suit between him and the Chesapeake and
[*a* 65] Delaware Canal Company. I have been in Mr. Randel's employ, at different times, for a number of years, and, while employed with Mr. Randel and Mr. Brown at the same time, our business was the same, copying papers. What Mr. Brown's business was when I was not there I do not know. I commenced business for Mr. Randel after Mr. Brown did; I cannot tell what year. Mr. Brown was then engaged with Mr. Randel before I came. It could not have been before thirty-two—say thirty-two or three—that I commenced; I think about that time; I am satisfied that it was not later than thirty-three, but think it was thirty-two. My agreement was, that I was to have one dollar and a half a day, and, if any business called me from home, my expenses were to be paid, my way expenses were to be paid, way wages paid. I have no knowledge of any contract existing between the complainant and the respondent. I know that other persons were employed copying, transcribing papers relating to Mr. Randel's suit against the Delaware and Chesapeake Canal Company about the same time that I was with Mr. Brown. There were three or four; what they all received I do not know. Two of them, Mr. Ritchie and Mr. Vining, I understood from them, received the same compensation that I did. There was a transfer or acknowledgment of two thousand dollars offered to me by Mr. Randel, which I refused. It was not made on the docket

to me. I objected to its being made, at the instance of my father. It was offered to me to make me a judgment creditor, that I might attach, to make me an attaching creditor under the law. This [*ob.* m.e.] Mr. Randel stated to me when he made the offer. It was to enable me to go on during Mr. Randel's absence attaching tolls. I know that a transfer was made on the docket to Mr. Brown. It was offered to me previous to its being offered to Mr. Brown. I know that the transfer to Mr. Brown was not actually made when Mr. Randel made the offer to me. I do not recollect exactly the time of the offer; it was some time in the latter part of [*a* 68] August or beginning of September. There was no other assignment made on the record to Mr. Brown, to my knowledge. I did go to the canal while Mr. Brown was making attachments; went on a Tuesday and returned on the next Sabbath morning. Mr. Brown was then attaching under this assignment. I can't recollect how long after the offer was made that he went down. I would be more likely to say a month than a week, but I do not know exactly.

Cross examination by Mr. Tyson, on the part of the respondent.

I think that Mr. Brown attached in the name of John Randel and William Linn Brown. Mr. Brown was there longer than I was. I objected to going down, because my father objected on account of the sickness of the place. I do not know that the responsibility was the principal objection with my father; it was only one of his reasons. I was sick while there. Mr. Brown was also sick—one night quite sick—I recollect it well, we slept in the same room; he was quite unwell for two days. I do not think it was for more than two days. I don't know that it was unhealthy on the canal. There were no cases of fever and ague to my knowledge. Captain Sutton, I now recollect, was quite sick; I think with a bilious attack. Mr. Vining was sick—he had a chill on him; I brought him up. I do not know if Captain Sutton's wife was sick. My illness was a bilious one, not an ague; Mr. Brown was also bilious. Mr. Vining was afterwards very ill at home; on his arrival at Newcastle he went to his bed. We were very cautious not to go out at night—it was the general impression that it was deleterious at night; all of us spent our evenings in the parlor. I do not know that Mr. Brown went out; he was up a great deal at night attending to the business of attaching, but whether he went out I do not know; some nights he was up great part of the night. I considered my duties to be those of a clerk—neither more nor less. Mr. Brown lived at Mr. Randel's house when he and I were in Mr. Randel's employ. While in Newcastle he was at Mr. Randel's—his permanent residence [*a* 70] was in Philadelphia; he was in Newcastle for weeks—for all I know, for months at a time. He was frequently absent on Mr. Randel's business; I do not know whether he was absent on business to consult with Mr. Randel's counsel. I have heard from Mr.

Randel himself, that he was absent on his (Mr. R.'s) business; I do not know that, when absent, he always was so on Mr. Randel's business. When Mr. Brown was in Philadelphia, I have mailed letters to him from Mr. Randel; I have never seen or known of any letters to come to Mr. Randel from Mr. Brown. I always looked upon Mr. Brown as a clerk. I never knew him to be consulted as counsel; if he was, it was without my knowledge; he was frequently present at the consultations of counsel. I do not know that he went to Washington—he went to Wilmington; I went with him. I do not know the precise character of Mr. Brown's employment when absent from Newcastle. He always appeared to me to feel a very great interest in the issue of that suit; he displayed it in the activity of his services.

Question by Mr. Tyson. Did you not understand that Mr. Brown was to receive a compensation, dependant upon the issue of the suit?

Answer. I understood from Mr. Brown that Mr. Randel had promised him a handsome compensation in case he (Mr. R.) gained the suit. Mr. Randel never told me so. I do not recollect ever hearing Mr. Randel say that he would make him a handsome compensation, or that he deemed highly of his services, or any thing of that sort. I don't think I was present at the conversation when Mr. Randel proposed to make this transfer of two thousand dollars on the docket, in favor of Mr. Brown. I cannot, of my own personal knowledge, say that it was not transferred in part compensation of Mr. Brown's services. I do not know the time when Mr. Brown commenced
[*a* 72] his services; it was some time before *I* commenced. My expenses were paid during my absence—he paid me at different periods—checks, from time to time. Some of his payments were not made till after the suit was ended; the whole amount has been paid to me. I gave receipts by endorsing the checks; in some cases I gave him a bill, and probably receipted it. The last payment was paid by a check to order, no other receipt. He never gave me a note payable at a future day; I do not know that he ever did to any of his other clerks—it was not his habit—at least I never knew of it. I do not recollect ever having been present at any conversation, in which it was stated how Mr. Brown was to be compensated, or the amount he was to receive.

B. A. JANVIER.

Taken, sworn, and subscribed, before me, May 29, 1837,
WILL'M. H. KEATING,
Examiner.

Deposition of Thomas Janvier, jr., esquire, examined by Joseph R. Ingersoll, esquire, on the part of the complainant.

Thomas Janvier, jr., esquire, of Newcastle, in the State of Delaware, a witness adduced on the part of the complainant, being duly sworn according to law, did depose and say: That he is thirty-three

years of age. I have known the parties in this suit for several years —Mr. Brown since the year 1829, Mr. Randel for several years previous. I have a general knowledge of the services rendered by Mr. Brown for Mr. Randel; it is a general knowledge. He came to attend to the copying of papers, &c. in the preparation of Mr. Randel's suit against the Chesapeake and Delaware Canal Company; also in attending the Hon. John Clayton in copying or drawing out the pleadings from his rough draft, or from dictation. In a particular case, which I recollect was at the time of the trial of the suit against the canal company; during the time of the trial Mr. Brown was engaged in the custody of the numerous papers which it was necessary to take to court; in copying different papers; sometimes he assisted in making calculations from data furnished by Mr. Clayton, (the mathematical counsel, who made investigations and calculations founded on certificates of work given by the engineers during the progress of work on the canal;) Mr. Brown also took notes of evidence in that case. I don't know positively whether he was employed by Mr. Randel to do so or not. I do not know it at all;
[o.b.c.] (*but my presumption was to the contrary, from*) *the fact that Mr. Randel employed me to report that case in extenso*,* which I did.
Mr. Brown attended as a witness, and received the ordinary
[a 76] certificate. I recollect the fact, as I attended at Mr. Randel's —as I attended at his house in the evening, for the purpose of causing to be written out the notes of the day. Mr. Brown disposed of the certificate to a Mr. Taliefer of New York—the amount of it I do not know. Mr. Brown sometimes wrote at my dictation, from notes which I had taken. I have not any knowledge of the compensation Mr. Brown was to receive. I recollect one evening, we were sitting in the back parlor, I was making some complaint as to the intensity of mind required, I recollect Mr. Brown said he intended to make Randel give him two thousand dollars for the labor. I had some conversation with Mr. Brown; he was at my father's last winter, to inquire what testimony could be given by me in this case. In the course of that conversation he gave me a history of the transaction upon which this case is founded, and told me that Randel had given him these certificates, which are now in controversy, for the purpose of negotiating a loan to enable him (Randel) to pay certain debts he had contracted—debts due to Mr. Camac, Mr. Chs. J. Ingersoll, and himself, so far as I recollect positively; but I think he mentioned the name of perhaps one or two others, but of that my recollection is indefinite. Upon that occasion I mentioned to Mr. Brown the fact of his having told me that he intended to make Randel give him two thousand dollars, (Mr. Brown had previously, during the conversation on that evening, told me that Randel had promised to pay him the amount of two and a half per cent. on the judgment recovered;) it was the first I had ever heard of any claim of that

* Objected to by Mr. Tyson.

kind—it was in the same conversation at my father's. I then told him that any testimony which I possessed would operate rather against him than in his favor, as I had heard him say, at the time above specified, that he intended to make Randel give him two thousand dollars. I would further observe, that on several different occasions during the progress of this suit, Mr. Brown and myself had fallen into conversation in relation to our recompense (I having acted as a commissioner under the appointment of our court, at the nomination of Mr. Randel, and looking to him for my pay.) The suggestion of two and a half per cent. struck me as a very remarkable agreement, on account of the disparity between the remuneration which I expected, having given Mr. Randel a great deal of labor, and the benefit of all the professional skill I possessed. The same sentiment was brought to my mind at the time Mr. Brown said he would make Randel give him two thousand dollars. I was unwell, had been debilitated, and did not pay as much attention to the conversation as I otherwise would—only the leading facts struck me. I think I had heard before of this suit as a general report; it was the first time, however, that I had any positive information. He was inquiring what testimony I possessed. He declined having me summoned. I have never had any conversation with him since. Mr. Brown informed me of the transfer on the record of two thousand dollars of the judgment (part of it) recovered by Randel against the canal company, and I have seen the docket entries. I looked to the record, having heard that Mr. Brown had endorsed for Mr. Randel. Mr. Brown told me of it. I forget whether or not I had told him I had seen the record. He told me the object of the judgment transferred to him, which was to enable him to attach tolls. I do not know whether he mentioned it spontaneously, or in reply to some observation of mine. He stated no other object as connected with that transfer, or independent of it. Mr. Brown told me this suit was for the purpose of recovering those certificates which he held in his possession, and which had been delivered to him for the purpose above stated. He stated that he had attempted a negotiation for a loan; that the attempt was founded on the basis of his giving his note, worth these certificates, as collateral security. He did not state whether he was to receive a compensation for the loan. I think the idea he communicated, as to the ultimate disposition of them, to me, was—that he intended to hold on to them till he had fulfilled the object for which they had been placed in his hands. I charged Mr. Randel, in reporting the case, five dollars a day. I agreed, during the progress of that case, to execute commissions, on his (Mr. Randel's) paying me my expenses; and I do not know if he was not to pay me five dollars a day when taking the commissions, but I do not claim it. I claim five hundred and fifteen dollars as the precise amount (I think) of the balance due me for reporting that case. I received in addition,

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on account of it, seventy or eighty dollars. I have no other charge against Mr. Randel. I make no other claim. I think I began to act as commissioner in 1831 or 1832, and was engaged at three different times; one commission I executed at Georgetown, absent about two weeks, including time of going and returning; one in New York, absent about the same time; one in Philadelphia, engaged for nearly three months, except an interval at home of one or two weeks. I was engaged myself in looking up the witnesses, and bringing them up before the commissioner. I acted as the agent in perhaps every case. I took all the labor upon myself. I reduced every commission to writing myself. I never made any charge for those services; from two hundred and fifty to three hundred dollars was all I received. The reason why I never made a regular charge, and now make none, was, that I sympathized deeply in Mr. Randel's situation, and felt disposed to lend him my assistance. I at one time paid Mr. Brown's mother seventy or seventy-five dollars for Mr. Brown, which he told me afterwards was all right. My father once cashed a check of Mr. Randel for Mr. Brown, for one hundred dollars, which was then payable at a future day. The first payment was on account of a journey he made to Washington—he was, I think, absent five or six days; the other was at the termination of the suit—I do not know the exact object of it.

[*a* 82]

Cross examined by Mr. Tyson, on behalf of the respondent.

The sum I paid was seventy or seventy-five dollars—that is my impression. I do not know the intention of it—Mr. Randel desired that I should hand it to Mr. Brown. I think he was not in Washington more than one week. We went down in the boat together. I was absent only a few days; when I returned I think I found Mr. Brown here. I do not know what his business was.

The time I devoted to Mr. Randel, in the execution of the commissions, was nearly four weeks at first, and then afterwards nearly three months; about four months altogether, not always engaged, but at intervals. This was in executing commissions. Then, in addition, the time in reporting the trial, which lasted near six weeks, I think, I charged against him five hundred and fifteen dollars. I received seventy for reporting, and two hundred and fifty for my services as a commissioner. I assigned the five hundred and fifteen to my father in September last. He paid me the amount. I have myself no claim at present. I assigned it with a view of raising money to enable me to go to the west, with other money my father then gave me; not with the view of becoming a witness.

I never attached on the canal; never performed duties, except professional duties. I did not charge the whole fee as a commissioner. Not pursuing the practice of the law as a regular business, but with a view to serve Mr. Randel, and not be at any burthensome expense to myself.

Mr. Brown was active in Mr. Randel's service. When
[*a* 84] sent for he attended. He copied all papers given to him; attended to it with fidelity. Mr. Randal never expressed to me any opinion of the value of his services; never said he felt grateful for them. I can't say that Mr. Brown manifested extraordinary interest in the case. There was much excitement on the part of all connected with the suit.

There were several other young men, engineers, who acted as clerks, and showed excitement; they came from the Ithaca and Oswego railroad, and had been attached to him there as assistant engineers. Mr. Brown took notes of the testimony, not of the argument. I know he was employed to take charge of the papers. I have heard Mr. Randel scold him when any paper was mislaid. Every day he gathered up the papers in a green bag when the court adjourned, and brought it up again when the court opened.

As to the transfer of two thousand dollars, Mr. Brown did not say that it had been transferred to him absolutely for himself. I recollect, on the contrary, he said it was to enable him to attach; to have the process go on while Mr. Randall was absent.

In the conversation in which he said "I intend to make Randel give me two thousand dollars," he did not say that he had given him two thousand dollars—no such thing.

Of the conversation last winter I cannot fix the time exactly. I came home from the West on the 15th of November. It was between that and the closing of the navigation. I cannot fix the time. It was a cold day. I am certain from the information of Mr. Brown, that the certificates were given for the purpose of negotiating a loan to enable Mr. Randel to pay certain creditors. I am certain that he named Mr. Camac, Mr. C. J. Ingersoll, and himself as creditors. As to others I do not recollect so distinctly. Mr. Brown
[*a* 86] said he would decline to summon me. I told him any testimony I possessed would operate against him. I told him of the conversation previous. I do not remember what he replied. I do not recollect that he denied it, but I recollect he told me he declined summoning me.

I know that Mr. Brown was frequently absent on Mr. Randel's business, perhaps on an average once a month, as a matter of judgment more than recollection. I should say he was in New Castle twelve times in a year; sometimes for one day, sometimes longer, three, four, or five days at a time. I do not know that it was always on Randel's business. He staid at Randel's house. He would frequently come down in the morning and return in the afternoon. He told me at times he had come down that morning and would return the same day.

I do not know particularly what was the character of his business when absent. I have understood it in conversation with him, as I stated it in my examination in chief. I have known him to go to Dover on several occasions on Mr. Randel's business. I do not

know that his going to Dover was invariably so. My information was derived from conversations with him.

I know of his going to Wilmington on one occasion; I went with him. It was in the progress of the trial for the purpose of obtaining a copy of the record from the clerk of our circuit court of the United States, of the judgments entered against the canal company by, I think, the Banks of the United States and Pennsylvania. I went to the clerk's office with him. I have not known him to go to New York or Albany. I do not know what the business was that took him to Washington. I think he was unwell. Whether he rose from his bed or not, I cannot say. His face was protected against cold. He complained of a severe cold. I do not recollect going to his room to communicate instructions to Mr. Randel. I recollect going to his room once, but whether on a visit or on business, I do not recollect.

[*a* 88] I do not know whether the seventy dollars paid his mother were as a compensation, or for expenses in going to Washington. (My impression was, that if Mr. Randel had given me a similar amount, I should have returned him any balance for equal service. I should have felt under an obligation to do so. This impression I derive from my own feelings.)

[*o. b. m.*] [Mr. Tyson objected to the impressions of the witness being received.] Mr. Randel has never objected to any part of my charge; he knew the amount of it; he has admitted the correctness of it; never disputed it to my knowledge.

Re-examined by Mr. Ingersoll.

I know that Mr. Brown was engaged as an agent for a person residing in Wilmington, who owns real estate here; also of his collecting debts on the peninsula for persons here. I know of his going to Elkton once on such business. I have known of his going to other parts of the United States on such business; once to South Carolina or Georgia. This knowledge I have from himself.

THOMAS JANVIER, Jr.

Taken, sworn, and subscribed, June 2d, 1837, before me,
WILL'M. H. KEATING, *Examiner*.

[*a* 90] *Deposition of Thomas Booth Roberts.*

Examined by Joseph R. Ingersoll, Esq., on the part of the complainant.

Thomas Booth Roberts, of New Castle, in the State of Delaware, aged twenty-five years, a witness adduced on the part of the complainant, being duly sworn according to law, did depose and say:

I know both the parties in the case. Mr. Randel since 1828, the time when he issued the writ against Benj. Wright. Mr. Brown I have a distinct recollection of since the spring or summer of 1831. In the year 1831, my father was the prothonotary of the

court of common pleas of New Castle county, and had been for many years previous. At the time of my first knowledge of Mr. Randel, and also of Mr. Brown, I was acting in the capacity of his deputy or clerk, and attending to the business of his office. There was a re-organization of the courts of Delaware by a convention. The old courts were abolished, and in the latter part of the month of January, 1832, a new court went into operation under the title of the superior court of the State of Delaware. Mr. Blaney was appointed the prothonotary of that court into which all the records of the old court were carried, and suits progressed.

I was appointed by him his deputy or clerk, and acted as such, and continued in the office. I never accompanied Mr. Brown to the lower parts of Delaware, after the termination of the]*a* 92] suit between John Randel and the Chesapeake and Delaware Canal Company in the year 1834; and in the month of January, judgment was entered on the verdict. Mr. Randel issued his first attachment, I think, to the May term succeeding or November term. Attachment was issued to attach the tolls on the canal, and laid in the hands of garnishees. These persons, after the attachment was laid in their hands, leaving the State, it was necessary to take other means to secure the debt, and I think, under the law of the State, if the plaintiff could make oath that they were about to leave the State, a *capias* could issue. I understood that it was necessary that this oath should be made by the plaintiff or by a judgment creditor. At the time the assignment of part of the judgment was made on the record to Mr. Brown, I had no conversation with him on the subject that I remember. After the assignment, he went to the canal, and as soon as the attachment was laid, he made the necessary oaths, and upon the oaths *capias* issued against garnishees. The *capias* were returned to the office of the prothonotary of the superior court.

There were errors in the proceedings of Mr. Brown, and the prothonotary being responsible that they should be issued properly, it was deemed proper for the prothonotary's security that they should be discontinued. The writs of capias were sealed and signed in blank and sent to the canal. Some persons were arrested under these *capias*, and owing to neglect in sending up the affidavit in season, they were not there when required before the judge; for this reason, among others, they were discontinued. I saw some affidavits myself in the hand writing of Mr. Brown, I believe, in one or two cases in which they were incomplete; but I [*a* 94] cannot specify the particular cases. I have conversed with Mr. Brown in relation to this suit between Mr. Randel and Mr. Brown. In the early part of December, I think the 9th, Mr. Brown came to the office of the prothonotary of the superior court, and expressed a wish to have some transcripts from the record of the suit of Randel vs. the Chesapeake and Delaware Canal Company, remarking in conversation to me, at the time, in the office,

that he presumed I was aware of the circumstances of his difficulty with Mr. Randel; and I stated to him, that I had seen Mr. Randel's caution to the public in the newspapers, against taking those certificates. He stated, that he had placed the certificates in court, after the bill was filed; that he did not wish to retain the certificates further than that he wished Mr. Randel to pay certain debts, for which those certificates were put in his hands for the purpose of negotiating a loan to pay.

I do not recollect whether the prothonotary was at that time in the office; afterwards, Mr. Brown conversed with the prothonotary in the office, in my presence, with regard to the certificates, to the same effect. In explaining the matter, he stated that the certificates had been put into his hands by Mr. Randel to raise money upon them, to pay certain debts of Randel's in Philadelphia, one of which he mentioned was to Mr. Camac—which debt, I think, he stated himself under some obligation to have paid by Mr. Randel, but I do not recollect the particulars; and another debt to Mr. Chs. J. Ingersoll. He did not state that the balance was for himself—he said he had exerted himself to negotiate the certificates to several persons, one of whom, I think he said, was a Mr. Biddle, but that he could not succeed. That Mr. Randel was going to the south without the settlement of these claims, and that in an in-

[*a* 97] terview with Mr. Randel, when he (Mr. Randel) talked of going to the south, that Mr. Randel wished him to return the certificates to him, but that he refused to do so until he (Mr. Randel) had settled those debts which he owed—and that Mr. Randel became very angry, and used vehement language. I do not recollect that Mr. Brown stated any specified claim that he had against Mr. Randel. In a subsequent conversation with him, in which he spoke of having the testimony of witnesses in New Castle taken, he asked me if he were to have me examined as a witness, what testimony I could give as to the value of his services while with Mr. Randel—stating that I being aware of his having been for years doing business for Mr. Randel, in which he devoted a great deal of time and labor, and also stating that during that time, he had been doing business for Mr. Randel without receiving any thing, depending upon contingencies; that if Randel was not to succeed in his suit against the canal company, he was not to receive any thing for his services, and he devoted all his time and labor without compensation. I stated to him that under those circumstances, that the sum of five thousand dollars would be the remuneration he ought to receive. He appeared satisfied, and asked me if I would give that testimony if summoned as a witness. I said I would. I was under an impression that he intended to summon me. He did not say that he made a claim of any sum. He did not name any sum. He stated that Mr. Randel had not paid him any thing. I do not know that Mr. Brown performed services for Mr. Randel during the whole time that he stated.

He stated to me that he had been constantly in his em-
[*a* 99] ploy. He did not say that the certificates were given to him in compensation for his services, but to negotiate a loan to enable Randel to pay his debts.

I left him in New Castle. He wanted to ascertain from me, as the witness, what his compensation should be, and said he would keep the certificates. He had held on to them because Randel had not paid him and other persons. But he did not state that they were given to him for the purpose of paying himself. He said that the certificates had been put in his hands to raise money to enable Randel to pay certain debts, but not naming his own. I understood Mr. Brown at the time, to communicate to me all the objects for which the certificates were put in his hands. He did not enumerate all the individuals to whom payments were to be made. I did not understand him to allude to himself at the time, as one of the individuals to be paid, when the certificates were placed in his hands. If the money should be raised, it was to go to the payment of these debts of Mr. Randel's. Whether the money was to be handed to Mr. Randel, or the debts paid by him, (Mr. Brown,) I do not recollect that he stated. He repeated the conversation between Mr. Randel and himself, when the former was angry, but I do not recollect the words they each used. The cause of the quarrel was, that Mr. Randel had wanted him to give up those certificates, when he was going to the south, and his refusal to do so, and his advice to Mr. Randel to pay certain debts before he went to the south. He did not refer to his own particular debt, as having been the cause of the difficulty. I understood him to allude to his regard for Mr. Randel, in his anxiety that he should pay certain debts before he went to the south. I was much surprised to see the caution in the papers, and to hear Mr. Brown state that he had had a differ-
[*a* 101] ence with Mr. Randel. I have had a subsequent conversation with Mr. Brown, only once since. Mr. Brown hoped that this would not make any difference as to my testifying as to the value of his services. I said certainly not. In that conversation, he did not in any manner alter the information as to the causes for which the certificates were placed in his hands, from what he had previously assigned. He did not say that he had come to any settlement, and I supposed he had not, from his asking me a question as to the value of his services. I had no charge individually for services rendered to Mr. Randel.

Mr. Brown's services to Mr. Randel were as a clerk; he copied pleadings, interrogatories, papers wanted by the counsel. I do not know what services he rendered, whether he wrote by day or night. I believe he did much writing, and during the time he was engaged was very industrious. The compensation of a copying clerk in Delaware varies very much, whether *per diem*, &c. My father paid a clerk two dollars a day for copying records for the Chesapeake and Delaware Canal Company. Some persons residing there copy

for less than that; that person was brought by my father from Philadelphia for the purpose, and paid his own board.

Cross examined by Mr. Tyson, on the part of the respondent.

In relation to the affidavits which were incomplete, the impression that we formed in the office was, that it was from want of skill in Mr. Brown. I do not recollect the particulars. I do not recollect the number; I think I recollect one or two which Mr. Brown prepared, I do not know if under his own judgment or the advice of counsel. I believe one of them was defective from the not signing the affidavit, but whether it wanted the signature of Mr.
[*a* 103] Brown or the justice before whom the affidavit was made, I do not recollect. So, in one or two cases, I don't recollect that Mr. Brown said he could not sign them without incurring penalties.

As to the origin of the quarrel, I don't recollect Mr. Brown's naming any creditors except Mr. Camac and Mr. C. J. Ingersoll. I do not remember that he said that these certificates were given to pay Mr. Camac and himself, and that Mr. Ingersoll might wait. He did not say that one cause of the quarrel was, that Mr. Randel would not pay him, (Mr. Brown.) He expressed no fear that Mr. Randel would not pay him. He said nothing about it. He wished to retain the certificates because Mr. Randel was going to the South without paying certain debts. He said that Randel owed him for his services, and asked me what I thought they were worth. This was in December last, after the bill was filed. I have conversed with Mr. Randel on the subject of this suit. I have read a copy of the bill and answer. I got them from Mr. Randel. I read them at different times; both this morning. I never reduced the conversation with Mr. Brown to writing.

I have conversed with Mr. Randel as to different parts of the answer.

Mr. Brown was laboriously employed for Mr. Randel, but I know not how long. I know he was at different times in New Castle, and very laboriously engaged for him. The superintending of the attachments and the drawing of the affidavits on the canal, I considered as common clerical duty. It required no professional acumen. I could have done it myself. I have been in the prothonotary's office. An intelligent clerk, who had not been in the office, who was not acquainted with the forms, could, I think, have performed
that duty after he was directed by the officer how it should
[*a* 105] be done. I have conversed to-day with Mr. Thomas Janvier, Jr., on the subject. I was present at his examination to-day. Mr. Brown has refused to go bail for me on one occasion. It was in the month of December, soon after the conversation detailed in the examination in chief.

Mr. Brown came to New Castle on the 22d of October, 1836. I do not know if Mr. Randel was there then. I think he then resided in the city of Wilmington. There was a re-assignment of

the two thousand dollars to Mr. Randel on the docket made by Mr. Brown. I don't recollect that he mentioned a settlement having been made at the time. I don't recollect that he said any thing; that he gave any reason; others did it; Mr. Clayton did it. The reason for the re-assignment to Mr. Randel was, that it was said to be necessary in the settlement between Mr. Randel and the canal company. I don't know any thing about it myself. I supposed it was done for the same reason in this case also. I don't recollect asking Mr. Brown if he had made a settlement; if I asked him, I don't know what answer he made; I have no recollection of asking him. In the conversation in December, Mr. Brown did not, so far as I recollect, speak of the contents of the bill.

T. BOOTH ROBERTS.

Taken, sworn, and subscribed before me, this 2d of June, 1837.

WM. H. KEATING,
Examiner.

[*a* 107] *Deposition of Cornelius D. Blaney.*

Examined by Joseph R. Ingersoll, Esq., on behalf of the compl'nt.

Cornelius D. Blaney, a witness on the part of the plaintiff, of New Castle, in the State of Delaware, aged forty-six and upwards, being duly sworn according to law, did depose and say:

I know the parties in this case, John Randel and William Lynn Brown. I recollect some time in the last winter, (I think in December,) Mr. Brown was at my office in New Castle, and had some conversation respecting a suit or difference with Mr. Randel. I was then prothonotary of the Superior Court of New Castle county. I have not a very distinct recollection of what Mr. Brown stated at the time. It appeared to have been his object to ascertain what testimony he could get in his favor, to bear in the trial between him and Mr. Randel. He had not much conversation with me on the subject; he had, probably, more with Mr. Roberts, who was my clerk. The substance of what I recollect about what he stated was, that he had found great fault with Mr. Randel for not having paid off some debts after getting money from the Chesapeake and Delaware Canal Company; that he had represented to Mr. Randel the impropriety of leaving those debts unpaid. I think he mentioned particularly a debt due to Mr. Camac, as a debt of honor which he ought to pay, loaned to him as a friend when no
[*a* 109] others would assist him. He spoke likewise of Mr. Randel's indisposition to settle with himself, as I believe. I think I did not attend very particularly. I do not remember that he stated how the certificates came into his hands. I remember he said that those certificates were retained by him for the purpose of being applied to the payment of certain claims in Philadelphia, which he himself considered himself bound in honor to see settled; he may have mentioned partly for the settlement of his own claim

for his services. I am not sure that he did. I am not sure that he said Mr. Randel had not settled with him; I do not recollect the exact words. The impression was, that he had a claim on Mr. Randel, which was unsettled. To the best of my recollection, he said that he had retained those certificates to be applied to the settlement of those claims which, he said, Mr. Randel ought to pay before he went to the South; and for that purpose he had taken them into chancery and deposited them there. I am certain of this fact, that Mr. Brown, on that occasion, did not mention that those certificates were given to him in payment of a claim to himself. I am positive of that fact. He did speak to me in relation to his services to Mr. Randel in the course of that trial. I mentioned to him that I would certify that he had been of very considerable service to Mr. Randel; that during the long pendency of the case assisting Mr. Randel in the business of his trial with the Chesapeake and Delaware Canal Company. I have not had any sub-
[a 111] sequent conversation with him. I don't rememember that he stated any thing in relation to the transfer on the docket.

Cross examined by Mr. Tyson, on behalf of the respondent.

I have known Mr. Brown about six years, since 1832; he was at the first of my recollection engaged with Mr. Randel, when I was appointed prothonotary of the superior court, in which court Mr. Randel's suit came; he was often at New Castle engaged. I have very little knowledge of his services, other than copying pleadings; particularly have recollection of his being once or twice at Dover; once in Washington on Mr. Randel's business, he was very assiduous, and appeared to take great interest in the case. I do not know what his department may have been, he appeared to act as an assistant; a great deal of his labor consisted in copying pleadings. I do not know whether Mr. Randel consulted him, or advised with him. I never heard what Mr. Randel was to give him, until within a few days, from Mr. Randel. Mr. Brown never mentioned it to me. I remember that in the fall of 1834, in September, he went on to the canal. It appears that process was issued in the handwriting of Mr. Brown, at Delaware city, as deputy prothonotary, for I filled all but the names of parties and date of issuing. I remember he was on the canal for some time acting as deputy prothonotary, at Delaware city. It would appear he was there from the 9th to the 26th September, 1834; whether before or after, I know not. This I ascertain from reference to the process that are filled up in his handwriting.

I made no minute of the conversation with Mr. Brown in December. I made very little of it at the time. It is difficult to recollect a conversation in an office like mine. I do not recollect that
[a 113] he communicated the contents of Mr. Randel's bill. It was a short time after Mr. Randel had published his caution. His object seemed to be, to justify himself for having made a transfer.

He was seeking testimony, he did not mention the bill. I do not recollect his saying, that he was in pursuit of testimony before filing his answer. It is my impression, he stated, that Mr. Randel had not settled with him, as well as with other persons that he was interested for; that he had taken those certificates into chancery for the purpose of compelling Mr. Randel to settle those claims, his own included. They were out of his control. My impression was, that he said he did not wish to make an unfair use of them. [Mr. Ingersoll objected to the conversation alluded to.]

I dont remember that he stated for what purpose those certificates were put into his hands; he may have done it in the office. I was engaged, and sometimes out. I dont remember if he was there in October, 1836. I do not recollect that he ever said that he had a settlement with Mr. Randel. I am sure he never did. I should have recollected it if he had. In regard to Mr. Camac's debt, I do not remember distinctly what he said; but my impression was, that he considered himself in honor bound to see it paid, either as having been instrumental in obtaining it or otherwise, but he was anxious to have it liquidated. Mr. Brown was often at New Castle. I cannot say how often. I believe he generally attended at the courts, while I was prothonotary. I never had any difference with Mr. Brown. I am not a particular friend of Mr. Randel's. I have known him a long time. I presume he is indebted to me, he has not paid me the full amount of the costs in the case of the Delaware and Chesapeake Canal Company. The account is not disputed, and there is no difference between us; he has paid me in
[*a* 115] part, and I am satisfied I shall receive the balance when he is in funds. I do not remember Mr. Brown stating, that he attempted to get a loan on the certificates. Mr. Brown was at the office some time, and the conversation was much with Mr. Roberts, which I did not hear. I have no recollection that he said the certificates were given to him to raise money on them. Mr. Vining, who had been at Delaware city, in July and August, (before Mr. Brown went down) was sick of the ague or bilious, and was sick for some time. I do not recollect that there were many sick. I do not recollect that the sheriff's officers were sick. I do not recollect that they refused to go down, or stay there on account of sickness.

Re-examined by Mr. Ingersoll.

The labor of a copyist depends on the capacity of the clerk. The usual rate is from one and a half to two dollars a day. I have paid one dollar for much.

In the Chesapeake and Delaware Canal Company's case, by an arrangement between them and Mr. Randel, they were to pay all the costs.

Cross examined by Mr. Tyson.

I believe that within a week or two, Mr. Randel got the balance of his costs from the company; part of them he got twelve months ago, but he has not paid it to me; he has paid me a part of what he has received since, and there is no difference on that score between us. I knew at the time he received them, what part he then received; he paid me three or four days since a part. He has received the whole of the costs within two weeks from the company; he had paid me a part during the progress of the trial. During the session of last May court, he got from Mr. Clayton the certificate to authorize him to collect the costs; the bill was taxed; the costs had been disputed, after Mr. Randel went to the south; he paid me what I received lately, when I came up to give testi-
[*a* 117] mony. Mr. Randel could not keep me out of it, and I had not the slightest apprehension as to his liability, or ability to pay me. If he had paid me the whole, I should probably have been more friendly to him.

C. D. BLANEY.

Taken, sworn, and subscribed before me, this 2d of June, 1837.

WILL'M. H. KEATING,
Examiner.

[*a* 119] *Deposition of William H. Vining, examined by Joseph R. Ingersoll, Esq., on the part of the complainant.*

William H. Vining, of New Castle, in the State of Delaware, aged twenty-six years, a witness adduced on the part of the plaintiff, being duly sworn according to law, did depose and say: I know these parties. I have known Mr. Randel and Mr. Brown, both since 1831. As far as I have any knowledge of the matter, the principal part of the duties performed by Mr. Brown for Mr. Randel, was in copying depositions, interrogatories, and other writings. I do not know of any arrangement between them in relation to compensation. I never heard Mr. Brown speak of any. I rendered similar services as to writing; about the same to Mr. Randel. I received one dollar and a half a day. I can't recollect how frequently Mr. Brown was employed; at different times from two to three days, and one time I suppose, from four to six weeks. I think this last was in the winter of '32 or '33. I do not know of the attachments at the time Mr. Brown was on the canal. I was sick at the time. I had been there before, acting as deputy to Mr. Blaney; the latter part of August, 1834, I was there two or three weeks. I do not know if he did the same thing as I did. I suppose he was not there more than three weeks. I don't know which of us, Mr. Brown or myself, was employed first by Mr. Randel. I began in
[*a* 121] the end of 1830, or beginning of 1831. I believe Mr. Brown came afterwards. Between the latter part of 1830 and the latter part of 1833, I believe I was more engaged at New Castle

for Mr. Randel than Mr. Brown, in the business of the canal suit. I don't know that I can answer what his services were worth. I don't know what they were. I did not consider them as more than my own copying, or any others who were employed with us. I could not say how long he was employed. Mr. Randel paid me in the whole time somewhere about four hundred dollars. That included the compensation for my services on the canal. It includes all I received from Mr. Randel. There was no difference in compensation for time on the canal; all at one and a half dollars per day. This service was in 1834. I was there in August and July—taken sick latter part of August. I was again there for a few days in October. Only two or three days about the middle of October. I do not know if Mr. Brown received any money from Mr. Randel. I have no recollection of it. When writing for Mr. Randel he boarded and lodged at Mr. Randel's, I believe all the time. I do not know of his having collections or employment for other persons than Mr. Randel. I have been absent to the south for six months. I returned on the 20th May.

Cross examined by Mr. Tyson, for the Respondent.

I was sick on the canal, and contracted my disease by going out gunning on a rainy day—and slept with my window open—it was my own fault—there were some sick there, but not more than in New Castle and other places.

I do not recollect that the sheriff's officers objected to stay on account of the sickness. I was there in part of July and August. I was taken sick at the end of August. It was not sickly there. I do not know that it was sickly afterwards. I do not know
a 123 whether or not it was the sickly season. Mr. Randel paid me my salary from time to time, just as I wanted it. Sometimes once a month, or once in two or three months, just as I asked for it. I did not hear that Mr. Brown was to receive a *per diem* allowance. I don't recollect, but it seems to me I heard something of the sort, that Mr. Brown was working in the expectation of a present from Mr. Randel. I don't know if I heard Mr. Brown say so. I did not hear that any other person on the canal gave his services in the expectation of getting a present. I don't know but that some expected it as an addition to their compensation. Between 1830 and 1833 I was more engaged at New Castle in copying the writings than he was. I do not know what services he performed when not in New Castle. I lived there. I was never absent on Mr. Randel's business that I recollect, but once for a day to Philadelphia to copy some papers.

I don't remember of Mr. Browns' being absent except to Philadelphia, and know not whether he was then on Mr. Randel's business or not. I do not know whether he was employed by Mr. Randel when not in New Castle. I was in New York upwards of one year. I have heard that Mr. Brown was then employed by Mr. Randel at

different times, but how long I do not know. I considered a dollar and a half as my compensation, but if it had been a contingent, not certain one, I should not have considered it sufficient. In the copying of papers, Mr. Brown sometimes assumed the direction. Sometimes Mrs. Randel did in the absence of Mr. Randel.

Re-examined by Mr. Ingersoll.

I was generally paid in bank notes. I did not give receipts, I [*a* 125] supposed, but did not know. But I supposed Mr. Brown received compensation then as I did.

Second cross examination.

I knew nothing about it; merely supposed so. I never heard Mr. Brown say so. I have sometimes given Mr. Randel [*o. b. c.*] a receipt—not when he paid me finally—I do not remember—I believe not. Mrs. Randel kept the account.

By Mr. Ingersoll.

The money was almost always paid to me by Mrs. Randel.

By Mr. Tyson.

I did not board at Mr. Randel's. None of the clerks did, except Mr. Telfair, of New York. I believe he was a regular book-keeper, closing some canal accounts.

I do not know if Mr. Telfair has any claim against Mr. Randel. I received no extra compensation besides the one and a half dollar. When engaged with Mr. Randel my time was deducted from the railroad company's compensation—part of it, nearly all.

WILLIAM H. VINING.

Taken, sworn, and subscribed, on the 2d June, 1837, before me,

WILL'M H. KEATING,
Examiner.

Deposition of Andrew C. Gray, esquire.

Andrew C. Gray, of New Castle, in the State of Delaware, Esq., a witness examined on the part of the complainant, of [*a* 127] competent age, being duly sworn according to law, did depose and say: I know the parties, Mr. Randel and Mr. Brown.

I had a conversation with Mr. Brown once, and only once, to my recollection, in relation to the certificates. It occurred about the month of December last. Mr. Brown called on me at my office in New Castle, and informed me that there was a suit commenced by Mr. Randel against him, in relation to the transfer of a certificate (of the Chesapeake and Delaware Canal debt to Mr. Randel.) His object in calling on me, he stated, was to learn whether I would act as commissioner for him for the purpose of taking depositions of witnesses for him in that cause, in relation to that matter. He

stated, that he was then making inquiry in relation to witnesses, whom he might find it necessary to examine in relation to the controversy. I consented to act as commissioner for that purpose, and since that time I have not seen Mr. Brown, nor did I receive any commission from him.

He stated, that he had received a transfer, I think, of $10,000 from Mr. Randel of the canal debt for the purpose of raising money with which Mr. Randel wished to pay his debts. He told me at the time, that he had found considerable fault with Mr. Randel in not settling up some of his debts after he had an adjustment of
[*a* 129] his difficulties with the canal company, and in consequence of Mr. Randel's apparent indisposition to pay his debts. I think he mentioned one to Mr. Ingersoll—perhaps one to Mr. Camac, as another, although I am not certain now; he stated also, that Mr. Randel had owed him money for services which he had rendered him during the long litigation which had taken place between Randel and the canal company. In consequence of these things he had determined to hold on to these certificates; that Mr. Randel was about going to the south for the purpose of entering into the service of a railroad company in Georgia, as their engineer, without making any arrangement to pay either his own claim or others; those probably I have referred to. He determined to hold on to the certificates, as the only means of enforcing the settlement of them. I think he made use of some such expression as, that he had Mr. Randel in his power. That seeing his indisposition to pay, he had determined to make use of the power he had to pay himself. He did not at that time during that conversation, give me to understand, that the certificate or certificates had been placed in his hands, originally, by Mr. Randel, for the purpose of paying him his debt, or as a satisfaction for it. My apprehension was, that this certificate was placed in his hands for the purpose of raising money generally. And that, after he had received the certificate in consequence of all the matters I have mentioned, he had a perfect right, and it was the best opportunity of securing payment to himself of his debt. I have no knowledge of the transaction, except as communicated to me by Mr. Brown at that time. I saw the advertisement in the paper before, cautioning the public
[*a* 131] against taking a transfer of those certificates; that was the only information I had previous. I was concerned (not originally) for the company, after Mr. Randel had obtained his judgment against the canal company.

When the attachment question was tried in our courts, I argued it with Mr. Bayard on behalf of the company. I knew the counsel of Mr. Randel during that cause. Mr. Brown did not, to my knowledge, appear as such; it is my impression that he had not then been admitted in the courts of Delaware. He certainly did not appear for him, so far as I know.

I have some knowledge of these two cases, (of which certified copies from the records hereto appended, marked A and B, and certified by the signature of Thos. B. Roberts and of the examiner, were presented to deponent,) No. 314, to November term, 1834, of the Superior court of the State of Delaware, and No. 313, of same term and same court. These two cases were the two first I attended to in this matter, in behalf of Mr. Joseph Hand. Captains William Pettit and Thomas McCormack were the captains. The attachment was laid in the hands of these two persons, and under our then existing act of assembly, where the garnishee was not an inhabitant of the State, if the plaintiff made oath that the garnishee was about to depart the county, and was indebted to the defendants in the attachment in any sum, upon such affidavit being made, the plaintiff was allowed to have a *capias* issued, to hold the garnishee to bail. These persons (Pettit and McCormack), under that act of assembly, had writs issued against them, under which they were arrested, and, for the want of bail, were committed to the prison of New Castle county. When I examined the proceedings under which they were arrested, I considered them defective and irregular, and obtained a rule in both cases to show
[a 133] cause of bail. One of the defects was, that the affidavit on which the *capias* was issued was not signed by the person who made the affidavit, Wm. Linn Brown, whose name appeared in the body of the affidavit; the other was, that another person than the plaintiff himself had made the affidavit which I considered that, under the act of assembly, no other person but the plaintiff could make. On these grounds the chief justice discharged (after a hearing) both the garnishees. Stating expressly that either of those grounds was sufficient, he made the rule absolute—discharging them. I saw the original affidavits; I can't recollect in whose handwriting they were. The affidavits were made at Delaware city. Mr. Brown was Mr. Randel's agent; the affidavits purported to be made by him—he was there as Mr. Randel's agent. I know it—I saw him there on one occasion.

Cross examined by Mr. Tyson, for the respondent.

In those attachments I think I represented Joseph Hand. I received a letter from him by the steamboat. I was in opposition to Mr. Randel. I do not recollect that Mr. Brown stated any reason for not signing the affidavit; that he, in this particular case, assigned some reason for not signing this. I do not recollect it—he may have said it—it is possible, but I have no recollection of it. He was, I think, present at the hearing of the rule. The agency performed by Mr. Brown is usually, I suppose, performed by a clerk, or a friend; it was not a business requiring professional skill. The service in reference to these attachments was afterwards performed for Mr. Randel by clerks who were not professional gentlemen—mere copyists. Whether Mr. Brown was employed on such ser-

vice as a clerk, I do not, however, know. I do not recollect Mr. Brown's words as to the certificates being left in his hands. [*a* 135] I do not recollect the words, but the impression. I think he did not say that these certificates were placed in his hands to pay himself and Mr. Camac. I think he said, as he had them in his possession, it was as well to hold on to them, for the purpose of paying himself, and I think he mentioned Mr. Camac and Mr. Chas. Ingersoll, as well as I can recollect. One of the reasons why I recollect Mr. Ingersoll in particular, is, that after the trial Mr. Ingersoll received from Mr. Randel a note, in payment of his services; that note had been repeatedly renewed in bank, and was not then paid. This conversation occurred when Mr. Randel called on him to give up the certificates. He was giving me his reasons. As well as I can recollect, I told him he was very justifiable in holding on to them, if he had a claim against Mr. Randel and wanted to get the money. My understanding was, that it was his intention to pay Mr. Camac, &c.; not that it was his agreement with Mr. Randel. The impression which Mr. Brown's words made upon my mind was, that Mr. Randel had placed these certificates in Mr. Brown's hands for the purpose of raising money; I did not understand from Mr. Brown that Mr. Randel had placed these certificates in his hands for the purpose of paying himself; but after having got the certificates in his hands, being fearful that Mr. Randel was not disposed to pay what was due to him, he was determined to take care of himself: that was my impression—not his words. I don't know that these were his words.

I recollect that there was something of the kind; that Mr. Brown had re-assigned that portion of the judgment against the canal company which had been marked for Mr. Brown's use, and which re-assignment to Mr. Randel constituted part of the con- [*a* 137] sideration for the certificates. I was aware of the fact at the time of the conversation, that that use to Mr. Brown for two thousand dollars had been stricken off the docket by direction of Mr. Brown himself. He told me that Mr. Randel was largely indebted to him, and *that* was the ground of his holding on to the certificates. I do not recollect that he said he re-assigned the judgment on the day that he received the certificates. I was aware that a suit had been instituted by Mr. Randel. I do not know that he said that he had filed an answer. I have never seen the bill, or any of the proceedings in the case. I saw Mr. Randel at the canal office receive a large amount, I think as much as nineteen or twenty thousand dollars, that day. I came up to Philadelphia with Mr. John Clayton, of our State, who had been the counsel of Mr. Randel in the case, for the purpose of having the scrip issued, &c.

I can't undertake to say that Mr. Brown said any thing of his compensation. I knew him to be a very devoted and indefatigable friend of Mr. Randel's. In that case, he seemed very anxious for

his success, and was very industrious. I can't recollect about a contingent compensation. Before that conversation, I never heard of a contingency. He never talked to me of his relations with Mr. Randel. I can't recollect seeing a copy of the record. I think he did not show me the copy of the record, re-assigning this judgment. Mr. Brown stated that Mr. Randel had used threats—tried to intimidate him, to bully him, in his endeavors to get back the certificates. I saw Mr. Brown very often at New Castle during the progress of the case. Very early in the period—at times he was absent. I should say he was there generally during courts, at that time Mr. Brown was there. Mr. Brown was also at Dover, at the time the attachment question was argued. It is my impression so. I can't say positively; but I believe he was there. Mr. Brown was
[*a* 139] there at most times, when the business of Mr. Randel was to be attended to. I remember his being there at the November term, 1834. I think he was there during the whole of the trial. At the argument of the demurrers, (which took place in May, 1834, and at November term, 1834,) upon the argument of the attachment, there was a case stated. I recollect Mr. Brown was there, but I do not recollect his taking part in it. He took copies of the cases stated, after they were made.

I remember Mr. Brown being at New Castle when Mr. Randel was away, probably frequently, attending to Mr. Randel's business—as Mr. Randel's friend, agent, or attending to his business. I did not suppose he was there as his attorney or counsel. I may have been wrong—but I did not suppose so.

Re-examined by Mr. Ingersoll.

I cannot say whether Mr. Brown was attending to other persons' business when in New Castle. I think he told me that he had business some where—on some business—and for some one—but I do not recollect for whom or where. I did not believe it was for Mr. J. Randel, jr.

I can't say I knew the object of the re-assignment. I was counsel for the captains. I believe that the assignment to Mr.
[*o. b. m.*] Brown on the docket, had been to enable him to make the affidavit. That was my impression.—[Objected to by Mr. Tyson, as not evidence.]

I can't undertake to say what Mr. Brown did for Mr. Randel during his absence. The proceedings were very voluminous—depositions and pleadings. Mr. Randel required a great many copies of them, he required many persons to copy—Mr. Brown was engaged in that way, and copied much.

I cannot say, from my own knowledge, that *Mrs. Randel* did much of her husband's business. I cannot undertake to say what Mr. Brown did at New Castle during Mr. Randel's absence. I
[*a* 141] think it was money that was paid to Mr. Randel in my presence. We came up to make a settlement. We found

that the canal company were not prepared on that day to issue the scrip. He received about nineteen thousand dollars. I know of four thousand five hundred dollars on account of costs—there were two sheriff's costs. I think Mr. Thos. Biddle paid him fifteen thousand dollars at the canal office. Mr. Randel had complained much of the disappointment. The canal company were unable to issue the scrip. Mr. T. Biddle asked him how much he wanted. I did not see the check given, nor the money paid. I was present at the conversation between Mr. T. Biddle and Mr. Randel. He received four thousand five hundred dollars, and I left the office under the impression that Mr. Biddle had met Mr. Randel's wishes on that day. It is my impression that Mr. Biddle said he should have the fifteen thousand dollars. There was something to be done. Something was given in lieu of the certificates, which could not be issued that day, and it was the impression of my mind, that Mr. Biddle advanced money upon those instruments, and that they were to be surrendered on the issue of the regular certificates.

Question by Mr. Brown, the defendant.

If Mr. Brown had signed the affidavit, and the chief justice had decided that the plaintiff alone could make the affidavit, it is not my impression that he would, under the laws of Delaware, be liable to an action to false imprisonment.

ANDREW C. GRAY.

Taken, sworn, and subscribed, this 27th of June, 1837.
WILL'M H. KEATING, *Examiner*.

Deposition of Thomas Booth Roberts, in continuance of his former deposition.—(See above.)

The deponent having looked at the copies of records [*a* 143] marked A and B, and hereto annexed, identified by the signature of this deponent, and of the examiner, says: I have seen the original records, of which these purport to be copies. The originals are in the handwriting of Mr. Wm. Linn Brown, with the exception of the jurat of the magistrate. I have seen him write frequently, and am well acquainted with his handwriting.

I stated that the writs were issued from the office, signed by the prothonotary, and under the seal of the court, in the manner exhibited in the annexed form, (produced and hereto attached,) marked C, and identified by the signature of this deponent and of the examiner. There were other affidavits made by Mr. Brown, which were signed. All were signed but these two. There were five or six I think.

T. BOOTH ROBERTS.

Taken, sworn, and subscribed, this 27th of June, 1837.
Before me, WILL'M H. KEATING, *Examiner*.

Deposition of Thomas Stockton, examined by Jos. R. Ingersoll, for the complainant.

Thomas Stockton, of New Castle, in the State of Dela-
[a 145] ware, a witness adduced on the part of the complainant, of competent age, being duly sworn, according to law, did depose and say: I am acquainted with the parties, John Randel and William Linn Brown. I had certain assignments to my use on the docket, made either by Mr. Randel, or by his order, to me. I think four. Each was for about two thousand dollars. He was not indebted to me, nor did I know the reason why it was done. I knew of it, assented to it, in full confidence all was proper, at Mr. Randel's request. I supposed it was necessary for some purpose or other. I re-assigned them to Mr. Randel. I cannot tell when. It was at his request I did it. It was not for the purpose of securing a debt to any person whatever, that the assignment was made to me. I never had any conversation with Mr. Brown in relation to these matters.

Cross examined by Mr. Tyson.

I saw the assignments on the docket. I think they were to me absolutely, not in trust.

I thought I was doing an act that would aid Mr. Randel in the settlement of his business, and that all was right and fair. No one of them was for the use of Mr. Clayton. There was an order for certificates for Mr. Clayton placed in my hands. I don't
[a 147] know when I re-assigned the judgment. The transaction of Mr. Clayton took place in October or November last.

I know of Mr. Randel's purchasing some property for himself in New Castle, previous to last November. I can't say when exactly. More than a year ago. He has purchased a house in Wilmington. Last summer I think. The property in New Castle amounted, I think, to four thousand dollars; that in Wilmington, to five or six thousand dollars; that in Wilmington was paid by certificates of stock, as collateral security. I don't know any thing about the mode of making payments for that in New Castle. I know of Mr. Randel's wishing to borrow money at the bank in New Castle, to pay his debts. He applied to me as a director of the bank.

I know by rumor only of his owning a farm in Maryland.

Re-examined by Mr. Ingersoll.

I do not know that he had money to pay for those purchases; that in Wilmington he gave his notes for, and certificates as collateral security. He bought that property cheap. I went with Mr. Randel at the same time to the president of a Wilmington bank, and I was one of his trustees with Mr. Paul Beck, Jr., and Wm. D. Lewis, to whom an order was given on the canal company for a certificate of debt to the amount of ten thousand dollars; since that, I was to be acting trustee. I have received a letter from Mr. Randel,

from the south, containing a notice to be advertised in the papers, calling upon his creditors to call upon me. It was not published, because Mr. Lewis said we could not pay them. I have not known Mr. Randel to have any means to raise money, but by certificates of debt. I have known a debt of Mr. Randel's to remain unpaid to an institution, of which I was a director. He gave certificates of stock finally to meet it. I think that up to this time, Mr. Randel has not been possessed of moneyed means. I believe the canal debt is his sole reliance. I have been intimate with Mr. [a 149] Randel for some seven or eight years, and he has spoken very freely to me of his wants. I have tried to borrow money for him on pledge of certificates, and on mortgage of his real property in Delaware or Maryland, but ineffectually.

Cross examined again by Mr. Tyson.

He may have had means without my knowing it, but I had no knowledge of them.

T. STOCKTON.

Taken, sworn, and subscribed, this 27th of June, 1837.

Before me, WILL'M. H. KEATING,
Examiner.

A.

In the Superior Court, for New Castle county.

Attachment. Fi. Facias.

JOHN RANDEL, JR., *vs.* THE CHESAPEAKE AND DELAWARE CANAL CO. } 32.

Laid in the hands of Thomas McCormick and others.

NEW CASTLE COUNTY, *ss:*

Personally appeared, William Linn Brown, a creditor, claiming benefit under the above writ of attachment, who being duly sworn, doth declare, that Thomas McCormick, the garnishee above named, is, as he verily believes, about to depart this county, and that he, the deponent, doth verily believe, that the said garnishee is indebted to the defendants in the sum of two hundred and sixty-six dollars.

Sworn and subscribed, at Delaware city, New Castle county, September 22d, 1834.

Before HOWARD OGLE,
Justice of the Peace.

Endorsed—WILL'M. H. KEATING, *Examiner.*
T. BOOTH ROBERTS.

(A.)

NEW CASTLE COUNTY, *ss:*

The State of Delaware, to the Sheriff of New Castle county, greeting.

Whereas, a *writ of attachment*, fieri facias, hath been issued from our *superior court*, tested at New Castle, the twenty-eighth day of May, one thousand eight hundred and thirty-four, and returnable on the seventeenth of November next ensuing, at the suit of JOHN RANDEL, JR., against the *Chesapeake and Delaware Canal Company*, by virtue of which said writs, divers goods, chattels, effects, or credits, have been attached by you, in the hands and possession of a certain Thomas McCormick, residing in the said county, as it is alleged. *And, whereas*, William Linn Brown, a creditor, claiming benefit under the aforesaid writ of attachment, hath, upon his solemn oath declared, that the said garnishee is, he verily believes, about to depart this county, and that he doth verily believe, that the said garnishee is indebted to the said company in the sum of two hundred and sixty-six dollars. *We, therefore, command you*, that you take the said Thomas McCormick, if he shall be found within your bailiwick, and him safe keep, so that you may have his body before the JUDGES of our superior court, at New Castle, on Monday the seventeenth day of November next, to make answer as garnishee of the said Chesapeake and Delaware Canal Company on the said writ of attachment, fieri facias, agreeably to the act of General Assembly, entitled "an act directing the manner of suing out attachments within this government." And further to abide the judgment of our said court in the premises. And have you then there this writ.

[L. S.]

Witness the honorable THOMAS CLAYTON, esquire, at New Castle, the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and thirty-four. Issued September 22d, 1834.

C. D. BLANEY, *Prothonotary.*
Per T. BOOTH ROBERTS.

Endorsed—Bail in $532 $\frac{06}{100}$.
Endorsed—WILL'M. H. KEATING, *Examiner.*
T. BOOTH ROBERTS.

[*a* 151] (A.)

In the Superior Court of the State of Delaware, held at New Castle, in and for the county of New Castle, of the November Term, A. D. 1834.

Rogers, Read, Jr.—Gray.

JOHN RANDEL, Jr., vs. THOMAS McCORMICK, garnishee of the Chesapeake and Delaware Canal Company. } 314

Capias. Bail in $532 00. Sheriff returns. Cepi corpus and in custody, afterwards discharged by order of Thomas Clayton, Esq., Chief Justice.

In the Superior Court, November Term, 1834.

JOHN RANDEL, Jr.,
vs.
THOMAS McCORMICK, garnishee of the Chesapeake and Delaware Canal Company.

Attachment capias. Bail in $532 00.

To the honorable Thomas Clayton, Chief Justice of the State of Delaware,

The petition of Thomas McCormick, the above named defendant, respectfully represents:

That your petitioner has been arrested by James Gardiner, high sheriff of New Castle county, and is now in the custody of the said sheriff, under the process above mentioned; that your petitioner is not indebted to the Chesapeake and Delaware Canal Company in any sum whatever. Your petitioner therefore prays that he may be discharged, on filing common bail.

THOS. McCORMICK.

September 24, 1834.

[*a* 153] The rule to show cause is granted in this case, to be heard on the 26th inst. at my office in New Castle at 10 o'clock A. M. Notice to be given to the plaintiff or his attorney.

T. C. CLAYTON.

September 24, 1834.

On hearing, rule made absolute, and defendant discharged on common bail.

T. CLAYTON.

September 26, 1834.

NEW CASTLE COUNTY, *ss:*

I, James C. Mansfield, prothonotary of the Superior Court of the State of Delaware for the county aforesaid, do certify that the above and foregoing pages contain a true copy of the record of the case therein mentioned, as the same remains in my office.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of the said court, at New Castle, the sixteenth day of June, A. D. 1837.

JAMES C. MANSFIELD,
Prothonotary.

STATE OF DELAWARE, *to wit:*

I, John M. Clayton, chief justice of the State of *the State of* Delaware, and, as such, presiding judge of the Superior Court of the said State, do hereby certify that the preceding attestation by James C. Mansfield, esquire, prothonotary of the said court within the

county of New Castle, and to which the seal of the said court is affixed, is in due form, and by the proper officer.

In testimony whereof, I have hereunto subscribed my name, at Dover, in the said State, this seventeenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven.

JOHN M. CLAYTON, *C. J.*

NEW CASTLE COUNTY, *to wit:*

I, James C. Mansfield, prothonotary of the Superior Court of the State of Delaware, within the said county of New Castle, do hereby certify that the honorable John M. Clayton, who hath subscribed his name to the foregoing certificate, was, at the time of so doing, and now is, chief justice of the State of Delaware, and, as such, presiding judge of the Superior Court of the said State, duly commissioned and qualified.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at New Castle, this nine-
[L. S.] teenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven.

JAMES C. MANSFIELD,
Prothonotary.

B.

In the Superior Court for New Castle county, of the November Term, 1834.

JOHN RANDEL, Jr.,
vs.
THE CHESAPEAKE AND DELAWARE CANAL COMPANY. } 32.

Attachment fi. facias; laid in the hands of William Pettit & others.

NEW CASTLE COUNTY, *ss:*

Personally appeared William Linn Brown, a creditor claiming benefit under the above writ of attachment, who, being duly sworn, doth declare, that William Pettit, the garnishee above named, is, as he verily believes, about to depart this county, and that he, the deponent, doth verily believe that the said garnishee is indebted to the defendants in the sum of three hundred and thirty-one dollars.

Sworn and subscribed at Delaware city, New Castle county, September 22d, 1834, before

HOWARD OGLE,
Justice of the Peace.

Endorsed: W. H. KEATING, *Examiner.*
T. BOOTH ROBERTS.

B.

NEW CASTLE COUNTY, *ss:*

The State of Delaware to the sheriff of New Castle county, greeting:

Whereas a writ of attachment fieri facias hath been issued [L. S.] from our Superior Court, tested at New Castle the twenty-eighth day of May, one thousand eight hundred and thirty-four, and returnable on the seventeenth day of November next ensuing, at the suit of John Randel, junior, against the Chesapeake and Delaware Canal Company, by virtue of which said writ, divers goods, chattels, effects, or credits, have been attached by you in the hands and possession of a certain William Pettit, residing in the said county, as it is alleged. And whereas William Linn Brown, a creditor claiming benefit under the aforesaid writ of attachment, hath upon his solemn oath declared that the said garnishee is, he verily believes, about to depart this county, and that he doth verily believe that the said garnishee is indebted to the said company in the sum of three hundred and thirty-one dollars.

We therefore command you that you take the said William Pettit, if he shall be found within your bailiwick, and him safe keep, so that you may have his body before the judges of our Superior Court, at New Castle, on Monday, the seventeenth day of November next, to make answer as garnishee of the said Chesapeake and Delaware Canal Company, on the said writ of attachment fieri facias, agreeably to the act of General Assembly, entitled "An act directing the manner of suing out attachments within this Government;" and further to abide the judgment of our said court in the premises. And have you then there this writ.

Witness the honorable Thomas Clayton, esquire, at New Castle, the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and thirty-four.

C. D. BLANEY, *Proth'y.*
Per T. BOOTH ROBERTS.

Issued September 22, 1834.
Endorsed: Bail in $662 00.
Endorsed: WM. H. KEATING, *Examiner.*
T. BOOTH ROBERTS.

B.

In the Superior Court of the State of Delaware, held at New Castle, in and for the county of New Castle, of the November Term, 1834.

Rogers, Read, Jr.—Gray.

JOHN RANDEL, Jr.,
vs.
WILLIAM PETTIT, garnishee of the Chesapeake and Delaware Canal Company. } 313.

Capias. Bail in $662 00. Sheriff returns cepi corpus, and in custody; afterwards discharged by order of Thomas Clayton, esquire, chief justice.

In the Superior Court, November Term, 1834.

JOHN RANDEL, Jr.,
vs.
WILLIAM PETTIT, garnishee of the Chesapeake and Delaware Canal Company.

Attachment capias. Bail in $662 00.

To the honorable Thomas Clayton, chief justice of the State of Delaware:

The petition of William Pettit, the above named defendant, respectfully represents:

That your petitioner has been arrested by James Gardiner, high sheriff of New Castle county, and is now in the custody of the said sheriff, under the process above mentioned; that your petitioner is not indebted to the Chesapeake and Delaware Canal [Company] in any sum whatever. Your petitioner therefore prays that he may be discharged on filing common bail.

WILLIAM PETTIT.

September 24, 1834.

The rule to show cause is granted in this case, to be heard at my office in New Castle, on the 26th inst., at 10 o'clock A. M. Notice to be given to the plaintiff or his attorney.

(Signed.) T. CLAYTON.

September 24, 1834.

On hearing rule, made absolute, and defendant discharged on common bail.

T. CLAYTON.

September 26, 1834.

The defendant, at the election of the plaintiff, pleads nulla bona. Issue continued, May, 1835. Continued November court.

NEW CASTLE COUNTY, *ss*:

I, James C. Mansfield, prothonotary of the Superior Court of the State of Delaware for the county aforesaid, do certify that the above and foregoing pages contain a true copy of the record of the case therein mentioned, as the same remains in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at New Castle, the sixteenth day of June, A. D. 1837.

[L. S.]

JAMES C. MANSFIELD,
Prothonotary.

STATE OF DELAWARE, *to wit:*

I, John M. Clayton, chief justice of the State of Delaware, and, as such, presiding judge of the superior court of said State, do hereby certify, that the preceding attestation by James C. Mansfield, esquire, prothonotary of the said court within the county of New Castle, and to which the seal of the said court is affixed, is in due form, and by the proper officer.

In testimony whereof, I have hereunto subscribed my name, at Dover, in the said State, this seventeenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven.

JOHN M. CLAYTON, *C. J.*

NEW CASTLE COUNTY, *to wit:*

I, James C. Mansfield, prothonotary of the superior court of the State of Delaware, within the said county of New Castle, do hereby certify, that the Hon. John M. Clayton, esquire, who hath subscribed his name to the foregoing certificate, was, at the time of so doing, and now is, chief justice of the State of Delaware, and, as such, presiding judge of the superior court of the said State, duly commissioned and qualified.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at New Castle, the [L. S.] nineteenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, 1837.

JAMES C. MANSFIELD,
Prothonotary.

Endorsed,

B. WM. H. KEATING, *Ex'r.*

(C.)

NEW CASTLE COUNTY, *ss:*

The State of Delaware to the sheriff of New Castle county, greeting:

Whereas a writ of attachment, fieri facias, hath been issued from our superior court, tested at New Castle, the twenty-eighth day [L. S.] of May, one thousand eight hundred and thirty-four, and returnable on the seventeenth day of November next ensuing, at the suit of John Randel, junior, against the Chesapeake and Delaware Canal Company, by virtue of which said writ divers goods, chattels, effects, or credits, have been attached by you in the hands and possession of a certain —— ——: And whereas the said John Randel, junior, hath, upon his solemn oath, declared that the said garnishee is, as he verily believes, about to depart this county, and that he doth verily believe that the said garnishee is indebted to the said company in the sum of ——. We therefore command you that you take the said —— ——, if he shall be found within your bailiwick, and him safe keep, so that you may have his body before the judges or our superior court, at New Castle, on Monday, the

seventeenth day of November next, to make answer, as garnishee of the said Chesapeake and Delaware Canal Company, on the said writ of attachment, fieri facias, agreeably to the act of General Assembly, entitled "An act directing the manner of suing out attachments within this Government;" and further to abide the judgment of our said court in the premises. And have you then there this writ.

Witness the honorable Thomas Clayton, esquire, at New Castle, the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and thirty-four.

C. D. BLANEY, *Prothonotary.*
Per T. BOOTH ROBERTS.

Issued ——— 183 .
Endorsed, C. WM. H. KEATING.
T. BOOTH ROBERTS.

C.

In the Superior Court for New Castle county, of the November Term, 1834.

JOHN RANDEL, JR.,
vs.
The CHESAPEAKE & DELAWARE CANAL COMPANY. } 32.

Attachment Fi. Facias.

Laid in the hands of —— ——— and others.

NEW CASTLE COUNTY, *ss:*

Personally appeared —— ———, a creditor claiming benefit under the above writ of attachment, who, being duly sworn, doth declare that —— ———, the garnishee above named, is, as he verily believes, about to depart this county, and that he, the deponent, doth verily believe that the said garnishee is indebted to the defendants in the sum of ——— dollars.

Sworn and subscribed at ———, New Castle county, ———, 1834, before me,

—— ———.

Endorsed C.

W. H. KEATING, *Ex'r.*
T. BOOTH ROBERTS.

Endorsed (*a* 64 *to a* .)

[*a* 165] *Deposition of Samuel Sutton.*

Examined by J. R. Ingersoll, Esq., for the Respondent.

Samuel Sutton, of the city of Philadelphia, of competent age, a witness adduced on the part of the respondent, being duly sworn according to law, doth depose and say:

I have known the parties since 1834. In the month of June, I think, I became acquainted with Mr. Randel. On the Chesapeake

and Delaware Canal, I first became acquainted with Mr. Brown. I was employed on the canal as deputy sheriff. Mr. Brown was engaged there; he was with us assisting in issuing attachments. He was there, I suppose, a month at a time. I do not recollect exactly the time. Once, a considerable time, he was there off and on. It was in 1834. I was there till 1835, and I think in November, 1835. Mr. Brown [was] also off and on the whole time that I was there in 1834, and till May, 1835; then I quit, and was down there again in November. We were pretty constantly employed; sometimes night and day; sometimes we had nothing to do; but we had to be always there, that is, while he was issuing the attachments. At night, at all hours of the night, if we wanted a *capias* issued, we had to go to Mr. Brown's room to have it issued. It was often necessary at night, whenever they came through, and they were liable. We had a watchman. Whenever he saw a vessel coming, he would wake me up. I then went to see if the captain was liable; if he was liable, I called on Mr. Brown. The most that I ever
[*a* 167] called was four times in one night. Sometimes twice, or once, sometimes not at all. Sundays we used to take an account in the same way, except reading the attachment and serving the *capias* on them. He made affidavits—was about—gave us instructions how we ought to proceed, &c. He was very active, I thought very. No man could have been more so; or could have taken a greater interest, as I thought.

This was during the whole time he was there; perhaps five weeks at that time. I do not remember the time. I did not charge my mind with it.

We had pretty nearly all the country about there to contend against; and to stop the captains, we used to set up till about twelve o'clock at night. Then the watchman would take charge, and if he saw any thing coming, he would come and wake one of us up—one of the deputy sheriffs. The calls were at all times; some of them after twelve at night. He always got up and attended to his duties. The country was very sickly at that time—all hands got sick—Mr. Brown got sick—all the deputy sheriffs became sick—myself too. I went in one night to call Mr. Brown up to issue a *capias*; he complained very much of being unwell; said he could not stand it any longer. About an hour afterwards, I suppose, I went up again and waked him up. It was not a great while afterwards that I again went up. He said he must give it up. He complained much. Said he would not get up at all hours of the night.

The next day he complained very much, but he stuck out some while longer. Know not how long—but all left. All were sick—all left but he and I. I cannot pretend to say how long he had been there, when he took sick. Some said they would not stay, and went away. Mr. Gardner, (the sheriff's son,) took
[*a* 169] sick and left. Mr. Vining was taken sick, and he left. I was taken sick, but I was confined but two days to my house.

They used to get me down to the office; the night air was dangerous, and the smell was bad—filth from the stables. Mr. Brown manifested a very unusual interest in the affairs of Mr. Randel. I never knew a man take such interest in another man's business. He employed himself actively at his business. I mean with zeal. Always heard Mr. Brown take Mr. Randel's cause as [warmly] as I ever heard any one do. At first, every body used to talk against Mr. Randel, but after a while they changed their minds. I heard Mr. Newbold and Mr. Brown argue much about his character. Dr. Black also. Some one was always complaining, and all of us who were employed in his cause tried to vindicate his character. Mr. Brown knew more to the purpose, and he seemed to be the principal man [*o. b. e.*] they pitched upon. (The first I ever heard about the compensation Mr. Brown was to receive, was from Mr. Newbold and Dr. Black.) [Objected to by Mr. Ingersoll.] I never heard Mr. Randel say any thing about it; what per centage he was to receive. (Dr. Black said he was to give him a per [*o.b.e.m.*] centage. It was common rumor, that Mr. Brown was to have a per centage. Mr. Brown and Mr. Clayton they said.) One day I was in the office there, I did not charge my memory at the time, for I did not expect any thing would occur out of it, there was some talk about per centage, but I cannot recollect what it was. But I recollect Mr. Brown said to me afterwards, do you mind that? I said, By George! I wished he would say so to me. Mr. Randel had, I believe, to leave there once on some business, and I mentioned to him that the captains would go through, and he would have nobody to make affidavits to them. He said he was going to make an assignment of [*a* 171] part of his judgment to Mr. Brown to enable him to make oath. He said he would make an assignment to some of his creditors, and then they could make oath. (Mr. Janvier first told me that he was coming. That Mr. Randel was go- [*o. b. c.*] ing to make an assignment to him, but afterwards, I found that he had made it to Mr. Brown. I believe it was in [*o. b. m.*] consequence of Mr. Janvier's saying he would not stay there. He told me he would not stay there; the place was too sickly. The attaching creditor was obliged to make oath to the indebtedness of the captain to him (the creditor.) Mr. Randel said he was indebted to Mr. Brown. That he would make an assignment to him, that he could make oath and stay in his place. Mr. Brown made oath. I do not know whether any other than Mr. Brown did make oath.

Mr. Randel told me he had made an assignment to Mr. Brown, who was to act in his place. I do not recollect any other conversation with Mr. Randel. Mr. Brown paid me something on account of Mr. Randel. At one time I could not get it of Mr. Randel. I borrowed ten dollars of Mr. Brown. At another time I got ten dollars here from him to take me down to New Castle—to take me home

to winter. Sometime Mr. Randel was short of money. That is my receipt (marked A) and hereto annexed, signed by Capt. Sutton. He lent me money also, for which I gave no receipt that I recollect. I never repaid him. I do not know if he ever got it from Mr. Randel or not. Mr. Randel was indebted to me when Mr. Brown lent it to me. I received the ten dollars at the time the receipt is dated. At the time my brother-in-law was buried. I borrowed it to take my wife down home. I wanted money, and I went to Mr. Brown, and told him I wanted money to take me to Delaware city. I told him Mr. Randel was owing me some money. I
[a 173] could not get it just then; I would pay him when I got it. He gave it to me, and I went down. I never paid back to Mr. Brown any money he lent me, not that I recollect. I received money from Mr. Brown on Mr. Randel's account, not more than twice that I recollect, except sometimes half a dollar or a dollar at a time down there, to buy some things that I wanted. Mr. Randel was not there, so I called on Mr. Brown. The first ten dollars I borrowed of Mr. Brown, I had asked Mr. Randel for, and he said he had no money just then. On one occasion besides that, for which I gave receipt, I borrowed ten dollars without receipt; it might have been twice, but I think only once. I found no difficulty in getting it from him. Mr. Brown did not pay my expenses on the canal; I paid my own expenses. I saw Mr. Brown last November. I think it was then. I am almost positive Mr. Brown called down in November some time. (He told me there was some difficulty between him and Mr. Randel. He said Mr. Randel had given him a couple of certificates to enable him to get money to pay off some debts that he was liable for, and to pay himself—certificates of the canal company. And that afterwards Mr. Randel had come there and demanded them, and he would not give them up. He stated how he came to demand them. I do not recollect exactly how. It was for some property he wished him to purchase in Wilmington. Mr. Brown told him that there was a golden opportunity now to enable him to triumph over all his enemies, and asked him if he had paid off some debts that he owed here, in Philadelphia; and Mr. Randel told him *no*. He would not give him up the certificates; and Mr. Randel said he did not owe him (Mr. Brown) a cent. Mr. Brown said, he told him he need not think to come there to bully him out of it. Mr. Randel, he said, struck his hands together, went out, slammed the door after him, and left the house.

Mr. Brown said Mr. Randel had given him those certi-
[a 175] ficates to pay some debts in Philadelphia that he was accountable for—I do not know if he said *debt* or *debts*—and the balance to go to pay him (Mr. Brown). Mr. Randel got angry when he refused to buy the property for him. He said that he had told Mr. Randel he would not make himself liable for him, and Mr. Randel got mad; he would have nothing to do with purchasing the property, because he thought he ought to pay the debts

he owed before he incurred more. Mr. Brown said Mr. Randel intended to go to Georgia. Mr. Brown told me he was going to Delaware in a day or two, to enable him to get testimony there. I asked him afterwards, and he said he had been to Delaware.

[These conversations between the witness and the respondent were objected to by Mr. Randel in Mr. Ingersoll's absence, but the counsel for the respondent desired them to be taken, subject to exception.]

Cross examined by Joseph R. Ingersoll, Esq.

I judge of the time spent on the canal by the fact of Mr. Brown and myself being there. From recollection—I don't speak with certainty. He was there, I should say, a good many times, but cannot pretend to say how often—perhaps a dozen of times; sometimes for two or three days. Can't pretend to say how much I received. I was to have been paid by the day—two dollars per day—but I did not consider that I was to be up night and day. I have not been paid in full. I have given a receipt in full, with a promise. Mr. Randel promised to compensate me when he got his affairs settled; he did not say how—he would always remember me, and compensate me. There was a dispute when we came to settle, as to the time. He had never discharged me. I was there a whole winter. Some days we were there and did not attach. These were days when there were no vessels to attach. When we came to settle, Mr. Randel examined the book, and when he found some days on which there were no attachments, he supposed I was not there, and docked those days off; but my impression was that he would settle all. He has not paid me for every day I
[*a* 177] was there: I think he acknowledged it when we settled. He said if I had asked it as a favor, he would have given it to me; but as I asked it as a right, he refused it. I was poor, and so I took the money; if I could have done without it, I would not have taken it.

I complained to Mr. Randel. I do not know that I do know what the others who were there got. I have not heard Mr. Vining say what he got by the day. Mr. Brown was there, to make oath to the indebtedness, part of the time; part of it he acted as prothonotary. I do not know of any of the *capias* issued by him being set aside. I have heard that two or three of the oaths made by him were not signed. I do not know that his power as prothonotary was withdrawn by the prothonotary. I do not know how long he exercised it.

N. B.—Mr. Ingersoll declines cross examining the witness as to any conversations with other persons, not deeming them legal testimony, and not wishing to ratify them in any manner.

Re-examined by J. R. Tyson, Esq.

I have never had a quarrel with Mr. Randel—never a word; never asked him for the money which I thought was coming to me. Instead of that, I have vindicated his cause as much as any man.

Cross examined again.

I mean to say that Mr. Randel's cause was unpopular there, with the leading men of Delaware city. There were a great many persons there who are nobody; but with those who understood it, it was the general impression there with them that it was a wrong case—that he ought not to succeed.

SAMUEL SUTTON.

Taken, sworn, and subscribed before me, the 26th of July, 1837.
WILL'M H. KEATING.

A.

Received, February 12th, 1835, of Wm. Linn Brown, the sum of *ten dollars*, for John Randel, junior.
$10 00 SAMUEL SUTTON.

Endorsed: A.—Samuel Sutton.

Randel *vs.* Brown. } Identified by Captain Sutton, before
W. H. KEATING, *Exam'r.*

[*a* 179] Deposition of William D. Lewis.

Examined by J. R. Tyson, Esq.

William D. Lewis, of the city of Philadelphia, of competent age, a witness adduced on the part of the respondent, being duly sworn according to law, doth depose and say:

I am the cashier of the Girard bank. I know the parties to this suit. Mr. Randel got a loan from me in July, 1836; I think it was on the 29th of July, on a hypothecation of the Chesapeake and Delaware Canal loan. It *was* on the 29th—hypothecation of fifteen thousand dollars of the loan, on which I took his obligation. The loan was made by me, individually, at that time. The certificates were taken in his name, and held with powers of attorney to transfer, which have subsequently been transferred. The amount which Mr. Randel received was fourteen thousand five hundred dollars in cash, on an hypothecation of fifteen thousand dollars of the loan. The certificates were written ones—three, of five thousand dollars each, numbered one, two, and three—in the name of Mr. Randel. The powers of attorney to transfer were given by Mr. Randel with the certificates. These written certificates were subsequently exchanged by Mr. Randel for printed ones, which have since been surrendered to the company, on the transfer being

made. The money was paid on the day of the hypothecation. I think no other stocks have been hypothecated by Mr. Randel since, in that year. I have no recollection of any. There has recently been a transfer of fifteen hundred dollars, connected with another transaction. On examining the ledger of the bank,
[*a* 181] I found that the following deposites were made to the credit of Mr. John Randel, jun'r, on the dates affixed to them—all in the year eighteen hundred and thirty-five:

September 17—One hundred and fifty dollars.
Do. 19—Fifty dollars.
October 13—Four hundred dollars.
December 11—Forty dollars.

I do not know by whom they were made; the three first appear to have been made in bank notes, on reference to the teller's scratcher; and the last one the teller thinks was by a check, but the mark in his book is not sufficiently distinct to enable him to speak positively; he can't ascertain whose check. The loan alluded to is the funded debt entitled to priority of payment, usually called the Randel debt.

WM. D. LEWIS.

[The complainant's counsel declined cross examining.]

Taken, sworn, and subscribed before me, July 26th, 1837.

W. H. KEATING,
Examiner.

[*a* 183] *Deposition of Edward J. Axford.*

Examined by Mr. Tyson for the respondent, in the presence of Mr. Randel.

Edward J. Axford, of the city of Philadelphia, of competent age, a witness adduced on the part of the respondent, being duly sworn according to law, doth depose and say. Mr. Brown brought Mr. Randel to my store and introduced him to me as a customer; I carry on the tailoring business. Mr. Randel bespoke a suit of clothes and they were made and sent to him, I think at the United States' Hotel, I think early in the fall of 1835. I think I never made but one suit. That is my receipt for the money (alluding to a receipt in Mr. Wm. L. Brown's receipt book on the first page, marked by the examiner, "W. H. K., July 26, 1837," forty-four dollars and seventy-five cents;) there is no date to it, but my cash book, which I have brought with me, shows that on the 13th of October, I gave credit on my cash book to Mr. Brown for $25, paid for himself, and to Mr. Randel for $44 75. Mr. Brown paid me that sum in full for Mr. Randel's business.

Mr. Randel declines cross examining.

ED. J. AXFORD.

Taken, sworn, and subscribed, before me, July 26, 1837.

W. H. KEATING,
Examiner.

Deposition of Alfred Croskey.

Examined by J. R. Tyson, Esquire.

[*a* 185] Alfred Croskey, of the city of Philadelphia, of competent age, a witness produced on the part of the respondent, being duly sworn according to law, doth depose and say:

I am the first bookkeeper in the Schuylkill Bank of this city. The checks were paid, I believe all, on the days they respectively bear date, alluding to the five checks drawn on the Schuylkill Bank by Wm. Linn Brown; numbers, dates, and amounts as follows:

No.	thirty-three,	Sept.	12, 1835,	to blank	$110
"	thirty-four,	"	17, do.	J. R., Jr.	150
"	thirty-six,	"	19, do.	John Randel, Jr.	50
"	forty-five,	Oct.	13, do.	John Randel, Jr.	400
"	seventy-nine,	Dec.	11, do.	John Randel, Jr.	40

all of which were marked "W. H. K." on their face. I examined the ledger this morning and compared them.

Mr. Ingersoll declines cross examining.

ALFRED CROSKEY.

Taken, sworn, and subscribed, this 8th day of August, 1837, before me,

W. H. KEATING,
Examiner.

Deposition of Daniel B. Lippard.

Examined by J. R. Tyson, Esq.

[*a* 187] Daniel B. Lippard, of the city of Philadelphia, of competent age, a witness produced on the part of the respondent, being duly sworn according to law, did depose and say:

I am one of the city constables. Some time in the latter end of November or beginning of December, I was employed by the collector of John Watson & Co., (taylors,) to serve a warrant on Mr. Roberts, on board of the steamboat. The captain pointed him out to me, and I arrested him; it was Thomas Booth Roberts. After I arrested him, he said he was not the man. I then took hold of him, showed him the warrant, he said that was not his name: I looked to the captain, who signified it was the person, [objected to by Mr. Ingersoll.] I took him up to the office of alderman Binns, and after the usual proceedings, judgment was entered, and execution was issued, and I accompanied him to look out for security. We went to Mr. Wm. Linn Brown's, to his office in Pine above Seventh street. Upon his stating to Mr. Brown what he wanted him to do, Mr. Brown declined, and gave as his reason that Mr. Roberts was an evidence in a case he had pending in the State of Delaware; that if he became security for him, or paid the money, he might be

construed as having used an improper influence over him; I do not remember the words precisely. After a good deal of conversation, he started for prison. Mr. Brown went along. I went in with him, and Mr. Brown waited at the door. After I had lodged the execution, and was about coming away, Mr. Roberts called
[*a* 188] me back, and told me to tell Brown that he was a witness for him in this case, alluding to a case (that I do not recollect what it was for) and that for his treatment to him in this case, and allowing him to go to prison, he would fix him for it in his evidence before the court. They were conversing about the case all the time they walked together; they spoke about Delaware; I paid but little attention to the conversation about the case. His feelings seemed to be changed after Mr. Brown told him it was a shame to impose upon taylors in that way, that he ought to have paid for his clothes. He had, before we saw Mr. Brown, expressed friendly feelings towards Mr. Brown; afterwards his feelings seemed to be shy, cool, not disposed to answer Mr. Brown when he spoke to him, and when Mr. Brown gave him his hand, he was so cool in taking it that I thought he was about not to take it; and when he was in prison he called me back and sent the word to Mr. Brown that was mentioned. I stated to Mr. Brown what Mr. Roberts desired me to say.

Cross examined by J. R. Ingersoll, Esq.

I have not had any conversation with Mr. Brown on this subject since, until about three weeks since, when he called and asked me if I would call at Mr. Keating's or Mr. Tyson's; I said I would, if he desired it. The execution was returned to alderman Binns, it was on the day on which it was issued. I use my recollection of the substance of Mr. Roberts's words, not the very words, it was so long after (six months ago,) that I had forgotten all about it, but after he called my recollection and mentioned the names, I remembered the steamboat and the early hour, &c., which made the recollection stronger than it would be in an ordinary case.

DAN'L. B. LIPPARD.

Taken, sworn, and subscribed, this 8th day of August, 1837, before me,

WILL'M H. KEATING,
Examiner.

[*a* 191] Deposition of Frederick Brown, examined by J. R. Tyson, esquire.

Frederick Brown, of the city of Philadelphia, of competent age, a witness produced on the part of the respondent, being duly affirmed according to law, doth declare and say:

I have had no acquaintance with Mr. Randel, except by sight, until lately, since the verdict in his favor in the case against the Chesapeake and Delaware Canal Company. I know Wm. Linn Brown well, he is my cousin—he is the son of Chas. Brockden Brown.

I have had some conversation for several years, at different times, in relation to his connection with Mr. Randel.—[Objected to by Mr. Ingersoll.]

I thought he was spending too much time with him. He said it was to be profitable to him if Mr. Randel succeeded. I wanted him to have something specified, but he said not; he trusted to Mr. Randel. I wanted him to have an agreement in writing. He was to receive some compensation, but I wanted him to have some certain agreement. He never mentioned any specific sum. I was at my desk on one occasion—William came in. I think he said he had come from Wilmington. I give my impression as far as my memory serves me. I never expected to be called on in any way. He said he had received from Mr. Randel two certificates of the Delaware and Chesapeake Canal Company, of five thousand dollars each, out of which, if my recollection serves, Mr. Camac [*a* 193] and himself (Mr. Brown) were to be paid. I think Mr. Camac was to have two thousand dollars. I am not certain. I may have heard the sum from Mr. Camac since.—[Mr. Ingersoll objected to the taking down any conversations at which Mr. Randel was not present, and especially those connected with the supposed contract between the parties.]

I am positive that he said he was to be compensated out of these two certificates, and Mr. Camac was to be paid two thousand dollars; and then he turned the conversation to Mr. Randel's own business. That Mr. Randel had requested him to use his influence as a director of the Schuylkill bank, to obtain for him a loan on that kind of security, saying, that if I succeeded, Mr. Randel had authorized him to say, he would give me a premium of five hundred dollars. The loan was to be ten thousand dollars. This I declined, of course, with some feeling. I was nettled about it, that it should be offered then, on William's account. I determined I would merely make the inquiry, but I was very lukewarm about it; this had damped my zeal, if I had any. He said he would leave me a certificate, that I might show the kind of security—this I objected to, as I could tell what it was. He urged it, and I am not certain whether it was then or the next morning, that he brought me a certificate, with a note, I think his note; and at the foot of the note he mentioned the kind of security that would be given as collateral security, viz: the loan of the Chesapeake and Delaware Canal Company. I think it was the next morning. That was bank day. That is my impression. I put them into my pocket. And when I went to the bank before the board met, I casually mentioned the circumstance to Mr. Levis, and inquired whether such a loan could be had?—very lukewarmly. He replied, no; that is all that occurred in relation to the matter. I did not lay it before the board—did not show it to Mr. Levis, or to any one. I merely wished to have it said that I had made inquiry. It would have required much influence, which I did not care to use in this case. It was

[a 195] not that certificate that was to be given, but that was the kind of security that was to be given. I returned the certificate and note to Mr. Brown. I think I may have made the same remark when I had business at the Bank of the United States, to Mr. Jaudon or Mr. Cowperthwait, but showed neither the note nor the certificate.

Cross examination declined by Mr. Ingersoll.

FRED. BROWN.

Taken, affirmed, and subscribed, this 8th day of August, 1837, before me,

WM. H. HEATING.
Examiner.

Deposition of Edmund Draper.

Examined by J. R. Tyson, esquire.

Edmund Draper, of the city of Philadelphia, a witness, [a 197] of competent age, produced on the part of the respondent, being duly sworn according to law, did depose and say:

(Mr. Brown paid me fifteen dollars on account of Mr. Randel, and said at the time, that he paid it out of his own pocket.) The witness identifies a receipt of B. Stancliffe's, dated August 4th, 1834, for that amount, marked on the face of it "W. H. K.," and returned to Mr. Draper.—[Declaration objected to by Mr. Ingersoll.

Mr. Tyson then offered the same witness to prove a conversation between the witness and Mr. Brown before the filing of the answer. Mr. Randel not being present, and the object being to contradict the evidence taken by the complainant in regard to conversations of Mr. Brown's after the filing of the bill, but before the filing of the answer. The witnesses which it was intended to contradict not being present during the conversations with Mr. Draper, the examination being objected to by Mr. Ingersoll, for the complainant, the objection was sustained.

Cross examined by Mr. Ingersoll.

Mr. Stancliffe had deposited a claim for collection against Mr. Randel in the hands of Mr. Brown, through my hands. Mr. Brown has never charged any commission for collection of the claim, that I know of; he has not received any remuneration for it from Mr. Stancliffe, that I ever heard of. I received fifteen dollars [a 197] from Mr. Brown to be handed to Mr. Stancliffe, and handed it to him at the date of this receipt. I had been a partner of Mr. Stancliffe's before that time, but was not so then. I was not in partnership at the time of the transaction to which this claim refers. I had then ceased to be a partner. I know nothing myself of the indebtedness of Mr. Randel to Mr. Stancliffe. I have no interest in it. I do not know the amount of the alleged debt. I have heard it, but do not recollect.

Copy of the Receipt.

"Received August 4th, 1834, of Edmund Draper, fifteen dollars on account of bill against J. Randel, jr., in the hands of Wm. L. Brown for collection."

Signed, B. STANCLIFFE.

$15.

Re-examined by Mr. Tyson.

When application was made to Mr. Brown, I made it not professionally to him. I think Mr. Brown had paid us money, to Mr. Stancliffe and myself, for Mr. Randel before. I applied to him because Mr. Brown seemed to be very frequently in company with Mr. Randel, and appeared to be managing his business at the time. I do not recollect whether I gave Mr. Brown a receipt when I received the money from him—I doubt it. I took this receipt from Mr. Stancliffe when I handed over to him the money. I may have given a receipt. I wrote this receipt; the phraseology of it is my own. Mr. Brown said he paid the money out of his own pocket because Mr. Randel was out of funds. He made that declaration at the time he paid the money.—[Mr. Ingersoll's objection renewed.]

Cross examined again.

I do not know where Mr. Randel was at the time. It is so long since.

EDMUND DRAPER.

Taken, sworn, and subscribed, this 8th day of August, 1837.

Before me, W. H. KEATING,
Examiner.

Deposition of T. William L. Freeman.

Examined by J. R. Tyson, esquire.

T. William L. Freeman, of the city of Philadelphia, of com-
[*a* 201] petent age, a witness produced on the part of the respondent, being duly sworn according to law, did depose and say: I was called upon by Mr. Brown, something like two days since, requesting me to refer to my books in relation to the purchase of an orrery, made by Mr. Brown some time since. On looking back to the original book of entry, to the date referred to by Mr. Brown, I find entered therein, "sold for cash, Sept. 12th, 1835, an orrery, one hundred and ten dollars;" and I have before me the receipt signed by the owner of the orrery, whose husband was then in my employ. On refreshing my memory referring to the transaction, I recollect distinctly Mr. Brown's having one or two conversations in relation to the purchase, stating at the time that the orrery was purchased for a gentleman at New Castle. And I am under the impression that Mr. Randel's name was given as the gentleman

for whom it was purchased; but from the lapse of time I cannot be positive as to that fact. The orrery was packed, and to the best of my knowledge was placed aboard the boat, and sent to New Castle. I know, however, that it was sent from the city, and that it was purchased with that intention. I have now handed to me, by Mr. Brown, a check of his, which appears to have been paid at bank, bearing date on the day when the orrery was sold, and for the exact amount; but I am unable to say whether this check ever
[*a* 203] passed through my hands, from the circumstance that I have not endorsed it; being in the habit, generally, when I receive checks, not to draw them myself, but to endorse, and deposit them in bank. I do not know that it was given to the owner of the orrery; I think not, because the property was held, with other property, under an advance. I had loaned the money, and would have had an eye to the money; I could ascertain it from my books. (The check referred to by this witness, was the first one of those noted in the evidence of Alfred Croskey, taken this day.)

I know Eliza Myers—I know her handwriting. She is in Reading—her husband is in the city of Philadelphia. (Identifies a receipt given by her for one hundred and ten dollars to Wm. Linn Brown, Sept. 12, 1835, in Mr. Brown's book, marked in the margin "W. H. K." by the examiner.)

I am uncertain whether Mr. Brown paid me or her, but I am under the impression that he paid the money to me; and I know that it was said to be bought to be sent out of town.

Cross examined by Mr. Ingersoll.

The receipt is not in Mrs. Myers' handwriting. I do not know Mr. Brown's. It is not in the handwriting of any one in my employ. It is not in my receipt book. I do not know whose it is.

T. W. L. FREEMAN.

Taken, sworn, and subscribed, on the 8th of August, 1837, before me,

WILL'M H. KEATING,
Examiner.

The following receipts were exhibited before me, and admit-
[*a* 205] ted to be in the handwriting of Edward D. Ingraham, esq., by Mr. Ingersoll; and at the request of Mr. Tyson, for the respondent, I annex copies of them.

"Allen vs. Randel, Superior Court, March, 1835, No. 47.
"Jos. Hand vs. same, do. do. do. do. 48.
"Bunker et al. vs. same, do. do. do. do. 49.
"Received ten dollars by the hands of Mr. Brown; a retaining fee in the above cases.
"$10 *dolls.* (Signed)
"EDW'D D. INGRAHAM.
"March 20, 1835."

"Received from Wm. Linn Brown twenty-five dollars, for professional services to be rendered Mr. Randel in an action of debt against the Ches. and Delaware Canal."

(Signed) EDW'D D. INGRAHAM.
Feb'y 17, 1835.

True copies, taken by me, August 8th, 1837.
W. H. KEATING, *Examiner*.

Endorsed *a*) 165 *to a*(206.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

JOHN RANDEL, JR., vs. WILLIAM LINN BROWN. } Of April session, 1837—No. 1.

[*a* 206] *In Equity*.

Depositions taken before me on the 8th of August, 20 and 21 of September, 1837, after due notice of the time and place.

At the meeting held on the 20th of September, Jos. R. Ingersoll, esquire, the solicitor for the complainant being absent, Charles Ingersoll, esquire, attended for him, and desired that it should be noted that the said depositions were taken, subject to all legal exceptions.

The time and place of meeting had been fixed by mutual arrangement of the parties and their counsel, in my presence, previous to the adjournment at the meeting held on the 8th of August.

W. H. KEATING, *Examiner*.

Sept. 21, 1837.

[*a* 207] *Deposition of James Frazer.*

Examined by Mr. Tyson.

James Frazer, of the city of Wilmington, State of Delaware, of competent age, a witness produced on the part of the respondent, being duly sworn according to law, doth depose and say:

I live in Wilmington. I did live in New Castle; I left there last March was two years. I kept a hotel in New Castle; I have seen Mr. Brown there; he was assisting Mr. Randel in his business. I cannot say how frequently, and how long he was there—sometimes for two or three weeks, sometimes shorter, a week. I cannot exactly say how long, he came often. I cannot say how long he was absent. I think he took an interest in Mr. Randel's business, more than an ordinary interest; he seemed to be much taken with it, and almost every body there was deeply interested in it; he boarded at my house sometimes, sometimes he was at Mr. Randel's house, most part of his time at my house. I think he paid his bills himself. It is a great while ago, but I do not think I received any thing for him, but from himself. A paper was shown to the witness, but not identified by him. I have a recollection of the bill for twenty-two dollars and fifty cents for five weeks' boarding. I have a recol-

lection of a bill for twenty odd dollars. I know Mr. Brown paid me the amount, but I do not remember seeing the bill.

Mr. Tyson having then offered to prove by this witness
[a 208] conversations between this witness and the respondent, similar to those objected to in the evidence of Mr. T. Leaming Smith, and Mr. Ingersoll objecting to them, the objection was sustained.

Those conversations were held after the filing of the bill in this case, but before the filing of the answer. The object in offering evidence in relation to these conversations, was to contradict the witnesses examined on a former occasion, on the part of the complainant; but that neither those witnesses nor Mr. Randel were present at the conversations with this deponent.

Cross examined by Mr. Ingersoll.

I do not remember whether the bill paid by Mr. Brown was at the time of the trial. I do not know if the date of 1833 was correct, as to the year. I have no recollection of the time. My son told me there was a bill of twenty odd dollars. He gave me the money as from Mr. Brown. I did not say what was the exact amount. I have no knowledge of the payment, except as derived from my son. My books were destroyed, they would have told all about it, but they were destroyed in a box by mice. I have not any means of ascertaining the date precisely.

JAMES FRAZER.

Taken, sworn, and subscribed, this 8th of August, 1837.
Before me, WILL'M. H. KEATING.
Examiner.

[a 209] *Deposition of Matilda Frazer.*

Examined by J. R. Tyson, Esq.

Matilda Frazer, of the city of Wilmington, in the State of Delaware, of competent age, a witness produced on the part of the respondent, being duly sworn according to law, doth depose and say:

A paper being shown to the witness, she identified it as the hand writing of William Frazer, her brother. The paper was a receipt for twenty-two dollars and fifty cents, paid by Wm. L. Brown, dated January 28th, 1833, marked on the face of it "W. H. K." by the examiner.

Cross examined by Mr. Ingersoll.

I went to the court, I think Mr. Brown was at court. He was then staying at my father's house. The time I went to court, was at the time of Mr. Randel's trial. We left New Castle in March, 1833, and it must have been a little over a year before that, that I went to the court. I remember the day the verdict was given, Mr. Brown

was at our house at that time. I recollect Mr. Brown was in New Castle frequently.

MATILDA FRAZER.

Taken, sworn, and subscribed, this 8th of August, 1837.

Before me, W. H. KEATING,
Examiner.

[*a* 210] Deposition of James A. Bayard, Esq.

Examined by J. R. Tyson, Esq.

James A. Bayard, esquire, of the city of Wilmington, in the State of Delaware, a witness of competent age, adduced on the part of the respondent, being duly sworn according to law, doth depose and say:

Mr. Randel, through the agency of Dr. Sutton, made a contract with me for the purchase of a farm I owned in Maryland. The price was twelve thousand dollars. Dr. Sutton made the contract in his own name, at the time of the purchase. I had no personal knowledge, whether it was for Mr. Randel or not; I had heard it intimated, but had no knowledge of it. The terms were twelve thousand dollars in cash, if paid by the first of August, eighteen hundred and thirty-six. There was an alternative, in case he paid but half cash, which was thirteen thousand dollars, one half in cash, and the other half on certain credits, to be secured by bond and mortgage at one or two years, I do not recollect which, but the property was taken at the twelve thousand dollars. The conveyance was made to Mr. Randel, and ten thousand dollars in cash were paid on or about the first of August, I believe the day before, and he gave me the joint note of Dr. Sutton and himself for the balance; at ninety days for the balance. I am not positive as to the precise day. That note was afterwards renewed, and I do not know whether it has been paid as yet; ten thousand dollars was the amount paid at the time by Mr. Randel. I do not know whether any interest was retained in the property by
[*a* 211] Dr. Sutton; the impression on my mind was, that they both had an interest in it. The note was a joint note, and renewed as a joint note of Mr. Randel's and Dr. Sutton's. Mr. Randel was the person that paid me, whether by check or not, I do not know. It was not by a check on the Girard Bank to me, but he paid me by a check on, or by moneys drawn out of, the Farmers Bank of Delaware.

I know Mr. Randel's handwriting. This note is, I believe, in his handwriting, (alluding to a note, of which the following is a copy.)

"$300. "*Philadelphia*, April 18, 1836.

"Ninety days after date, I promise to pay to the order of Wm. Linn Brown three hundred dollars, without defalcation, value received.

(Signed) "JOHN RANDEL, JUN'R.

"Charge W. L. Brown."

The note is marked W. H. K. on the face by the examiner, and returned to Mr. Brown.

Mr. Hemphill, of Wilmington, held a lot in that town. A lot on Market street, extending back to King street, being between two hundred and fifty and three hundred feet front. Was supposed always to be his. He was the reputed owner of it. It was two hundred and twelve feet deep.

Cross examination waived by Mr. Chas. Ingersoll, for the complainant.

J. A. BAYARD.

Taken, sworn, and subscribed, this 20th day of September, 1837.
Before me, W. H. KEATING, *Examiner.*

[*a* 212] Deposition of Edmund Draper.

Examined by J. R. Tyson, Esq., for the respondent.

Edmund Draper, of the city of Philadelphia, of competent age, a witness adduced on the part of the respondent, being duly sworn, according to law, doth depose and say:

Referring to a receipt in Mr. Brown's, the respondent's receipt book, marked W. H. K., on the face of it, by the examiner. This receipt, in this receipt book, is all in my handwriting. Copy as follows:

"*Philadelphia*, January 1, 1833.

"Received of the Ithaca and Oswego Railroad Company, by the hands of W. L. Brown, Esq., seventy-six dollars, in full for work done by us for said company, to this date, per bill rendered.

"$76. "For STANCLIFFE & DRAPER,
(Signed) "EDM'D DRAPER.

"Signed—Duplicate."

Cross examined by Chas. Ingersoll, Esq., for the complainant.

That is my writing. It was the debt of the company. I know that Mr. Brown did business for Mr. Randel—that he paid money for him. I do not know whether this was charged in our books to Mr. Randel or to the railroad company.

Re-examined by Mr. Tyson.

I do not know whether Mr. Brown received from Mr. Randel the money he paid for him. I do not recollect if any thing was said at the time that it was an advance made by Mr. Brown, or
[*a* 213] whether it was a payment, by him, of moneys placed in his hands. I did business with Mr. Randel, under the impression that he was the engineer of the company; but I do not recollect having ever seen any evidence of it.

Second cross examination by Mr. Ingersoll.

We looked to the railroad company, and not to Mr. Randel, for payment of this debt.

EDM'D DRAPER.

Taken, sworn, and subscribed, this 20th day of October, 1837.
Before me, W. H. KEATING, *Examiner.*

[*a* 214] Deposition of John Telfair.

Examined by J. R. Tyson, Esq., for the respondent.

John Telfair, of the city of New York, of competent age, a witness adduced on the part of the respondent, being duly sworn according to law, doth depose and say:

I have been acquainted with Mr. Randel since 1805—with Mr. Brown since 1830. I was engaged by Mr. Randel, for a period of of six months in 1830, and remained with him fifteen months. The object of Mr. Randel was to transcribe a new set of books; take up his accounts generally; make statements in relation to the pending case between him and the Chesapeake and Delaware Canal Company. Mr. Brown was there a great deal of time attending to his professional duties as a lawyer. I thought so. Mr. Randel considered me and Mr. Brown as persons in whom he could confide. The books, &c., he confided to me when he was away, and the other matters to Mr. Brown. He confided to me and to Mr. Brown matters which were not imparted to others.

The witness identifies, as in Mr. Randel's writing, the signature to the letter marked A, and hereto annexed.

Mr. Brown was not considered as a mere clerk. His principal counsel, Mr. Clayton, lived at a distance from there, and would not or could not attend to business, unless it was prepared for him.

Mr. Brown prepared all the requisite documents, which were very voluminous.

Every six months the case was prepared for trial. He was occupied constantly with Mr. Randel personally. He was there many weeks together. We were room-mates. He was there a great proportion of the time which I was in New Castle, and I was there fifteen months. I understood that, when in Philadelphia, he
[*a* 215] was engaged in Mr. Randel's service. After I left there, I received some letters from Mr. Brown, when Mr. Randel wanted me to come down. I have some letters which Mr. Brown wrote to me at that time, (they are from Mr. Brown to Mr. Telfair, dated July 29, 1833; November 2, 1833; November —, 1833; and December 30, 1833. They were agreed to be received and annexed to this deposition, and to be subject to all exceptions. They are marked B, C, D, and E.) Mr. Randel confided to me (professing to believe me his friend) all that related to his books and accounts, and all other matters. The legal proceedings were entrusted in like

manner to Mr. Brown. The principal papers and documents were prepared by Mr. Brown, and afterwards perhaps altered by the principal counsel, when he was there. The sphere of his duties was more than that of a clerk. They were those of a counsellor and friend. He had six or eight clerks there at a time, hired by the day, copying under his direction. Under Mr. Brown's direction. He showed great zeal in the cause. Mr. Randel had great confidence in him. He was never inactive. There was a great deal of revision of papers. Mr. Randel once expressed, in my presence, some opinion of the value of Mr. Brown's services. Mr. Randel went to New York. At the expiration of the fifteen months, I left for home, and took the books with me, for the purpose of completing them, as my leisure afforded me. Mr. Randel followed me to take them back. He was very angry with me, and told me that I had ruined him—told me at [the] same time that Mr. Brown did not understand his case. It was the only remark Mr. Randel ever made against Mr. Brown or his services. He often spoke favorably. In this case I supposed he was under great excitement.

Mr. Randel told me, and I perceive by his books that he had given retaining fees of one hundred dollars to several gentlemen in Philadelphia. He gave fees of seven hundred dollars to [a 216] several counsellors. He was to give Mr. Clayton ten per cent. on the amount to be recovered; and to Mr. Brown two and a half per cent. on the amount. I never understood that Mr. Randel had ever paid Mr. Brown any money. I never knew whether he had paid any. In a degree where it was to come in, in the claim for damages. I knew what Mr. Randel paid. I knew what he paid counsel in several cases; the fees of seven hundred dollars I have mentioned. The only agreement I had with Mr. Randel was to engage me for six months; he was to pay me three hundred dollars and my board. I boarded in his family, so did Mr. Brown. I remained fifteen months. I do not know what I received. Mr. Randel was always much pressed for money, and he could pay me only partially. I do not know how much. At the request of Mr. Brown I made a bill so as to have it included in the damages. I sent it to Mr. Brown at his instance, as the agent of Mr. Randel. The statement comprises both what I received and what I claimed, and so far as it was in my power to give, I gave. I now have a salray as book-keeper of fifteen hundred dollars, and perquisites of perhaps one thousand dollars more. In Le Roy's, Bayard and Mc Evers service, I had seventeen hundred dollars, besides perquisites. In the Bank of America I had fourteen hundred dollars besides perquisites, and leisure time to do other business, so that I made about three thousand dollars a year. When I was called at the instance of Mr. Randel to give testimony before the jury to assess damages by. I was detained from November to February, and I lost my situation and engagement entirely. Mr. Brown's services were very different from mine; his were of use while mine were of

no use, because he was called on to give testimony, while the books &c., which I prepared, were not received in evi-
[*a* 217] dence. Mr. Brown's services were essential to Mr. Randel on other occasions, and the result (as mine were not called into use,) do not compare my services, were comparatively of no use, because I was not called upon to give testimony.

The above paragraph being read to the witness, he objected to part of the language ascribed to him, and desired to correct it as follows:

I don't think I used those words; they were not my meaning, nor is it my present impression. I believe in another instance I said he was attending to his professional duties as a lawyer, but I was wrong in saying so. Mr. Randel told me that Mr. Brown was a student in Mr. Sergeant's office. If he was only a student, I was wrong in saying he was a lawyer. In our place we call lawyers and law students all lawyers.

Mr. Brown did not testify in the case (of the Chesapeake and Delaware Canal Company) that I know of. I did not say any thing about Mr. Brown's services having derived any value from his testimony. The general supervision which he had of the whole affair, had given value to his services. His services were far better for Mr. Randel than those of a common clerk. I mentioned that the character of Mr. Brown's services was, that he was professionally engaged by Mr. Randel to supervise the legal proceedings under the control of the counsel in chief, otherwise acting as Mr. Randel's confidential agent in almost every thing he had to do there. He travelled for Mr. Randel from one place to another, at various times, and in various directions. He was engaged in copying, we were all engaged copying. I copied, so did Mr. Brown; he did a great deal of that. Mr. Randel told me himself that he was to give Mr. Clayton ten per cent. and to Mr. Brown two and a half per cent. of the amount which should be recovered in the suit.

Mr. Randel engaged me, he told me, for the purpose of
[*a* 218] taking up and examining his books and making statements of his claim against the company. Mr. Randel was afraid of having his books brought into testimony in the case, in consequence of their being kept very loosely and irregularly. After a short time it was concluded advisable to transcribe the books in a new form, and in such a way as my acquaintance with the books would enable me to do. I can hardly tell now what was done with the books that were transcribed. If Mr. Randel was afraid to use them in the case, he thought that these would answer. I do not know whether he thought these would answer; it was not till after we got through, or that I left, that Mr. Randel told me, all that I had done was of no use; he told me he wanted me to give testimony in the case. I never was called upon in court. On the proposition to submit his books to the court, the opposing counsel objected.

Question by Mr. Tyson.

Did he or did he not wish you to testify that the books which you had made were his original books? [Objected to as a leading question.]

Answer. He did not; he wanted my testimony. I told him I did not know in what my testimony could be of use to him, and that I would not give testimony in any case where I was not perfectly justified; and that, as I was unacquainted with the transactions on the canal, I could not testify as to them conscientiously. Mr. Randel was very angry with me at the time; he had followed me from New York to get the books—I mean *to* New York; and he said in his passion what I consider myself bound not to value—(this in answer to Mr. Tyson's question to the witness, What did Mr. Randel wish you to testify?)

As I mentioned yesterday, he said I had ruined him; that Mr. Brown did not understand his case; and this conversation of his, wanting me to give testimony, was said in the heat of passion. As Mr. Randel could not tell what he wanted, I cannot answer what he wished me to testify to; he did not know himself. He [*a* 219] was angry with me, because I left New Castle without remaining there and giving testimony, till the result of the trial, so as to give my testimony. I have a copy of the letter which I wrote to Mr. Brown.

Mr. Randel told me, on my going there to give testimony the last time, (at the summing up to ascertain the amount of damages,) that he had now obtained judgment against the company, he would make the fortune of all his friends. On his request to send in my account, so as to be inserted in the bill of damages against the company, I sent an account to Mr. Brown, of a bill which I consider he might justly charge to the company, for my claim or services. I expect Mr. Brown has it: I believe this is a copy of it. (The copy objected to, and withdrawn.) It was sent to Mr. Brown by mail. Mr. Brown was then at New Castle.

There was no positive engagement between Mr. Randel and me, except for six months, for which he was to give me three hundred dollars and my board. I was with him fifteen months. I always rested satisfied that Mr. Randel would do what was right in the case. I have never made any demand upon him, and I made the statement which I sent to Mr. Brown only at Mr. Randel's request, for the purpose of being included in the claim of damages.

I believe the original set of books were kept by two persons while he was on the canal. My son, who was an assistant engineer, told me a Mr. Tyson kept the books, and some one else also kept them in part. I went to New Castle on the 30th of May, 1830, and I commenced transcribing them some time afterwards. I have had intercourse with Mr. Randel since, very rarely. I have received from Mr. Randel communications desiring me to follow

him to Albany, to testify in a case he had against Mr. Brown. (A letter is exhibited to the witness, and identified by him as the one he received through the post office in Mr. Randel's handwriting—letter annexed, marked H, and herewith filed.) The fifty dollars, referred to in the letter, referred to a certificate given to me by the prothonotary for witness' fees, I suppose. (A certificate was shown for forty-five dollars and twelve cents, and admitted to be correct, as the money then due this deponent as a witness in the case of Randel vs. the Canal Company, and the certificate returned to Mr. Telfair.) I have not been paid the amount of that certificate.

[*a* 220]

Cross examined by J. R. Ingersoll, Esq.

When I left New Castle for New York, I took away with me the books which I had copied. He was angry with me that I did not stay at New Castle; he wanted me to remain with him till the result. I had carried away the books before. I believe more than once. I presume to say I carried away all the books—the old ones as well as the new copies. This must have been in September, 1831, because I left there in August, 1831, and this was a few days afterwards.

I transcribed the books from documents; got them in regular order; balanced the accounts as they had been balanced in the documents, as in the old books they were loose and irregular. I did not create any new substantial matter in the books; I gave form and order to what I found in substance in detached parts. I perceive that I have answered incorrectly now: the old books contained all Mr. Randel's accounts from the vouchers, but had been kept in a very loose and irregular way, and Mr. Randel considered his case unsafe, should he have to produce those irregular and loose books. I did not consider myself as preparing a false set of books, for the purpose of deceiving a court of justice. I considered myself as discharging the duties of an accountant, familiar with books. I could have testified that these fair transcripts which I had made were true results from informal and original documents. I was not present when the books were offered in evidence. I was absent, and was told that, on the proposal to submit the books, Gen. Jones, the opposing counsel, objected, and said they were all fabrications; and I suppose Mr. Randel was very glad that they were not received, because he was afraid of the books in their original state. He was afraid, I suppose, that the books would be offered, and that it would operate very unfavorably in the case, on account of the loose manner they were kept. As the thing he dreaded was avoided, I presume he was glad of it. I have no further explanation to offer as to my remark.

[*a* 221]

The object was to show by the books that there was a much greater amount of money expended by Mr. Randel, than he had received from the company, and he wanted to show it by the books.

Mr. Randel, and Mr. Brown perhaps, told me that Gen. Jones had considered them as a fabrication. I was in New Castle, but not at court at the time.

I do not believe that Mr. Randel rejoiced in not proving that he had expended more money than he had received—for he did prove that by statements, which he wanted the books in order to corroborate. The statements were given and received in evidence. The misunderstanding between Mr. Randel and myself occurred when I left there in 1831, but in 1834 I was called on and attended. When he came to take the books away, he said my services had been of no use. Never after 1831. I never did any thing more. In 1834, I attended to assist in the case, and to give testimony to prove the books.

I did not convey the books myself to New Castle in 1834. Mr. Randel followed me to New York in 1831, and took them away; I never had them after. It was always before 1831, or in 1831, that I took them away. I resided in 1834 in New York, and generally: (The letter of December 30th, 1833, being shown.) On that letter I left New York. As to the testimony I was expected to give, I do not know what exactly; it was to testify to books, documents, statements. Mr. Randel wanted me to make statements, and to give testimony in the case, as an accountant; and that testimony I was prepared to give.

Mr. Randel told me what I had done was of no use; he
[a 222] wanted my testimony. I mentioned to him, I did not know what testimony I could give that would be of any effective use to him. I certainly would not testify to any thing that was wrong. I don't know that any suggestion was ever made to me that hinted at a wish that I should testify to what was wrong. I told him then I would not testify to what was wrong. I told him so, because he wanted my testimony. He wanted it in the first place not to be known that I was there, for the purpose for which I was there, that is to say, to take up his books, which had been kept in a very loose and irregular manner. In that way I was kept secluded, and the object for which I was there was not known to the people. Mr. Randel wished it to be kept private for what object I was there.

Mr. Randel was apprehensive that the condition of his books would be a great objection in his case, and he wanted me to examine them, and put them in order, so that they could be exhibited with safety. I did not consider that in doing that, or any thing else I did there, I was doing any thing that was improper or dishonest. I made no objection to going there, when called to give my testimony in the fall of 1833, '4. I went down at the request of Mr. Brown, and remained there till the verdict was brought in. I was not called upon with a view to give testimony as to the accuracy of my postings of Mr. Randel's books. (On referring to Mr. Brown's letter, the witness adds, possibly it might have been.) The letter

A signed by Mr. Randel, is in the handwriting of Mr. Brown. I never saw any contract between Mr. Randel and Mr. Brown. I never knew of any payments made by Mr. Randel to Mr. Brown. I speak of my present recollection—it is a good while ago. I never knew of any moneys placed in Mr. Brown's hands by Mr. Randel.

I had access to many of Mr. Randel's receipt books. Saw
[*a* 223] a great many of them, but do not recollect seeing any receipts of Mr. Brown's in them. I never heard them make any arrangements as to pecuniary obligations or liabilities between them.

As I mentioned yesterday, Mr. Randel told me of the numerous engagements and payments he had to make, and fees to pay. Mr. Clayton was to receive ten per cent. Mr. Brown two and a half per cent. Mr. Rogers received seven hundred dollars at one time. Mr. Read, and I believe others were mentioned, at least, were known to me to be paid. This was spoken of while I was there, at New Castle. I suppose it would be in 1831. Sometimes Mr. Randel would communicate things to me, at other times he was very reserved. He mentioned it in the view of the great expense he was running in making payments to those professional gentlemen, that it was very hard for him to get money. He always complained of the hardship and pressure upon him, perhaps as an excuse for not giving me more. He said he had engaged the most eminent lawyer in the State, Mr. Clayton, and his entire reliance was upon his taking the case up; and he was to give him ten per cent. He had retained a great many professional gentlemen, all that he could reach, in anticipation of the Delaware Canal Company; and he gave them fees of one hundred dollars each. When his case came on, and it was requisite to have those gentlemen's services, he was obliged to pay them those fees of seven hundred dollars. I do not recollect how many were paid; but to my knowledge they were paid. Several of them, I think, received three hundred dollars at a time, subsequently.

It was well known to me, that Mr. Brown was there to assist in the case; and Mr. Randel told me that Mr. Brown was his personal friend, the nephew of Mr. De Witt, and that Mr. De Witt, Sur-
veyor General of the State of New York, was Mr. Randel's
[*a* 224] patron, and therefore he had the utmost confidence in Mr. Brown, and he thought he had all the qualifications that were necessary to conduct the legal proceedings in the case. Mr. Randel congratulated himself that he had made me (his friend) to attend to his books, and putting Mr. Brown also (his friend) on the other part of the case. He expressed his intention to allow Mr. Brown a per centage out of the amount—I believed so—that that was his intention from the fact of what they told me he did in relation to Mr. Clayton. I don't know how it was, whether this compensation to Mr. Brown was in lieu or in addition to any
[*o. b. c.*] compensation. I have been told by Mr. Brown since, that

he was to be paid for his time and expenses. This morning I have conversed with Mr. Brown. I called at Mr. Brown's at ten o'clock —then we went to Mr. Tyson's—and then came here.

I did not attend to Mr. Randel's call in his letter of the 7th of June last. I have never seen Mr. Brown's answer to the bill filed by Mr. Randel.

There is an unsettled account between Mr. Randel and myself at this moment. I conceive I have asked of Mr. Randel for relief in a great state of distress in which I was, and he answered me, he could not pay me. I have written to him several times about it, but he did not pay any attention to it.

I knew during the time that I was with Mr. Randel the nature of the services which Mr. Brown was in the habit of rendering to him. He had several young men. I have seen him pay them wages at a given rate per hour, as he needed them to work sometimes day and night. I do not remember the rates—about one dollar and a quarter a day. They were young men, assistant engineers sometimes. I don't know that there has been any other source of difficulty between Mr. Randel and myself. He inquired why an acceptance of his was negotiated by me—he came to New York about it. He did not know any thing about it. He came to New York, and said I had forged it. I never made any remark to him about it. This was about September, 1836; about one year since. He never has seen or heard how I felt about it. My feelings were not [*a* 222] excited about it, no more than when he told me I had ruined him. There was no truth in it—not at all excited. My feelings were wounded, not excited.

Re-examined by Mr. Tyson.

While I was in Mr. Randel's employ, I always understood that he was very much pressed for money—he told me so himself.

I was ten years in the employ of the house of Le Roy, Bayard, and McEvers. My general salary was fourteen hundred dollars; and I received from Mr. Bayard three hundred dollars for attending to a special account of his own; besides, I had perquisites and opportunities of adventures, making about twenty-five hundred dollars per annum.

Mr Tyson then proposed to ask the witness, whether he had any conversation with Mr. Brown in December last, saying, that the conversation had taken place after the filing of the bill, and before the filing of the answer, and were offered to contradict the witnesses examined on the part of the complainant, but that neither those witnesses nor Mr. Randel were present at the conversations with this deponent. Mr. Ingersoll objected to this testimony, and the objection was sustained.

By Mr. Ingersoll.

At the time I was engaged by Mr. Randel, I was to receive from Mr. Silas E. Burroughs six hundred dollars at least, per annum—Eight hundred or a thousand dollars if he was satisfied with my

services. He was displeased with my leaving him, and in fact paid me only six hundred dollars.

Mr. Randel told me he was to give Mr. Brown two and a half per cent., I understood, on the amount that was recovered.

JOHN TELFAIR.

Taken, sworn, and subscribed, before me.

The examination was commenced on the 20th of September, and adjourned over to the 21st of September, when it was concluded.

W. H. KEATING,
Examiner.

[*a* 228] Deposition of Elihu Jefferson.

Examined by J. R. Tyson, esquire.

Elihu Jefferson, of the town of New Castle, in the State of Delaware, of competent age, a witness produced on the part of the respondent, being duly sworn according to law, doth depose and say: I keep a public house in New Castle. I commenced keeping it on or about the 30th of May, 1832. Mr. Brown has been there frequently since; he staid part of the time at my house, and sometimes, when Mr. Randel's family was there, at Mr. Randel's. Mr. Randel and his family were sometimes absent; I cannot say how long; sometimes, I think, they were absent for several months. Mr. Brown was there during Mr. Randel's absence; I saw him there as far as my memory serves me. The first bill Mr. Brown made at my house was during the time of the trial, which resulted in the gaining of the verdict; part of the time commencing at November term, eighteen hundred and thirty-two; I know not for how long. That bill was rendered to Mr. Randel, and passed into his account with many others. I cannot say that he named Mr. Brown by name, but I understood that his bill was to be included among others; Mr. G. W. Smith, Mr. Telfair part of the time, and others, perhaps half a dozen of others. Mr. C. J. Ingersoll's were included in my account against Mr. Randel. I am not able
[*a* 229] to say how long Mr. Brown staid with me; he left before the trial was over, and went to Mr. Frazer's; perhaps he was three weeks with me, I cannot say positively. I think he went from my house to Mr. Frazer's, where it is my impression that he stayed during the residue of the trial, but I do not know it. Mr. Brown afterwards paid his own bill. So far as my memory serves me, I do not recollect that Mr. Brown assigned any reason why he did not pay the first bill. Mr. Randel stated to me that his expenses during the trial had been very heavy, and he desired me to include these bills in his account. Mr. Randel gave me, some time in the latter part of January, 1833, a note for the account against him, summing up all those bills. That note is not yet settled; I have a judgment for it. He owes me nothing else of any moment, perhaps some small bills not rendered, independent of that. I have

seen Mr. Randel's handwriting frequently, (a paper was handed to the witness, which was admitted by Mr. Randel to be in his handwriting; also a draft of Mr. Randel's drawing, admitted by him and hereto attached, marked F and G.) I have frequently seen Mr. Thomas Janvier, Jr.'s, handwriting; I have seen him write. (Two papers were shown to the witness.) I believe these are in his handwriting, (which are in the following words, the originals marked "W. H. K." on the face, and returned to Mr. Brown:)

"No. 1.

"John Randel, Jr., To Thomas Janvier, Jr., Dr.

"To counsel services as commissioner, at Georgetown, D. C., in the case of Randel *vs.* Chesapeake and Delaware Canal Company, from 15th June to July 4, 1831, 20 days, at $10 per diem - - - $200 00

"Cr. By cash in advance - - - - 50 00

$150 00

[*a* 230] "Rec'd payment in full,

"(Signed.) THOMAS JANVIER, Jr.

"NEW CASTLE, *November* 22, 1831."

"No. 2.

"John Randel, Jr., To Thomas Janvier, Jr.

"Nov. 20, 1833. To executing commission at Philadelphia, 20 days in actual service, and 13 in having the attendance of witnesses procured, the former at $10 per day and the latter at $5 - $265 00

"Rec'd, Nov. 20, the above amount in full,

"(Signed.) THOMAS JANVIER, Jr.

"NEW CASTLE, *Nov.* 20, 1833."

I am personally acquainted with Mr. Janvier; he is sometimes a sober man, sometimes not so. I have not seen as much of him within the last twelve months; he is at times intemperate; I can't say whether he is quarrelsome; it is said he is a little so when in-
[*o. b. m.*] temperate, though when himself he is a very fine man. It is said he had a quarrel in my house once, but I was not then at home. I never heard that there was a prosecution for assault and battery by his father against him; as to one by his uncle I cannot say; it was said there was a prosecution instituted by one against the other, but which instituted it I do not know. I knew the late Captain McCulloch; he was friendly to Mr. Randel I thought, I mean in the controversy with the Chesapeake and Delaware Canal Company. [Objected to by Mr. Ingersoll.] I think I have heard Mr. McCulloch express himself as friendly to Mr. Randel in that controversy. I do not recollect exactly the amount of my judgment

against Mr. Randel; I think between seven and eight hundred dollars.

Cross examined by J. R. Ingersoll, Esq.

I put my claim against Mr. Randel in the hands of Mr. Bayard for collection, and there was a judgment entered as confessed by his attorney, the late Mr. George Read, Jun. I do not recollect the time, but it was full two years since. I can't say the exact amount or the time; I think he died more than a year since. I
[a 231] think there were other persons at my house besides gentlemen of the bar, whose expenses were settled by Mr. Randel. There were two carpenters there who went to Ithaca with Mr. Randel; they had been staying some time at my house, and he undertook to pay their bills; they were included in his bill; there were some engineers; also, some other individuals. Mr. Lee was there; he had, I believe, been an engineer; he was, I believe, there as a witness for that purpose, in part. There were carpenters that made models; whether they made it while at my house I do not know, but there was a model of a lock at Delaware city, made to be used in court—made by one of these carpenters that lodged at my house. I don't know any thing of the papers receipted by Mr. Janvier just shown to me; I never saw them before. I know nothing of the circumstances to which they allude. I do not know how they came into Mr. Brown's possession. I never saw them, till I saw them yesterday afternoon, on the table in the examiner's office. I have never pressed that judgment of mine against Mr. Randel. Mr. Randel always told me he would pay it whenever he was in funds—that is the reason why I have not pressed it.

Re-examined by Mr. Tyson.

I presented my account or claim to Mr. Randel soon after the trial. I think he left New Castle for the north, about two weeks after the trial; before he left, the bill was presented and a settlement had. He stated as a reason for not paying it then, that his law suit had been more costly than he expected, and he had no means then to pay it. The account was settled by a note; I think at ninety days from the date; it was protested for non-payment. It was only a good while after that, that I brought suit.

[a 232] *Cross examined by Mr. Ingersoll.*

Referring to payments said to have been subsequently made by Mr. Brown, I have no distinct recollection of the time when Mr. Mr. Brown was with me since, or the amount paid, but he was there frequently since, and his bills were paid by him. My tavern register will show the times when he staid at my house during the night; we register all who stay at night, but we keep no account of those who come and go during the same day. He was there last winter, and before that; I cannot say how often he was there last winter, he has frequently been there.

E. JEFFERSON.

Taken, sworn, and subscribed, this 21st day of September, 1837, before me,

W. H. KEATING, *Examiner.*

[*a* 233.] A.

PHILADELPHIA, *July 9th*, 1832.

DEAR SIR: You will please let Mr. Brown have access to the trunk, deposited with you when I left New Castle, when he may wish it, and on presentation of this, will be sufficient privilege on his part from me to do so.

He has the key, and you will allow him, on my behalf, to take any papers from the trunk that he may have occasion for.

And oblige yours, respectfully,

JOHN RANDEL, JR.

To DR. COUPER, *Cashier of the Farmers' Bank of New Castle.*

Letter produced in evidence before me; the signature of John Randel, jr., proved by Mr. John Telfair, and referred to in his evidence.

W. H. KEATING, *Examiner.*

[*a* 234] B.

PHILADELPHIA, *July* 29, 1833.

DEAR SIR: I received two letters from you yesterday, and take the earliest opportunity to answer them. I am much obliged to you for the interest you take in my health, which is not very good just now, having come off a long journey to the extreme south.

Respecting the business at New Castle, we have at last come in sight of land. We have obtained a judgment against the company under a demurrer upon one of the counts in the declaration, and can obtain handsome damages on that count alone. We have yet six breaches to recover on, and are pressing forward to a trial.

I had great trouble, after you left, with the accounts. I fugged at them for some weeks. Randel is now at the north; and the railroad at N. Castle is pronounced by all judges to be the best constructed in the country, and does a great business.

Respecting changes at New Castle, Dodd died of the cholera; Lewis, the tavern keeper, is dead, and a Mr. Jefferson keeps the hotel. The troops have long since left the place, and it is quiet enough; I go down now and then. Mr. Dickey has also left, and it is all as it used to be there, dull enough.

We had a famous time in May at the argument, and the counsel of the company was completely floored.

The whole of my time, when at New Castle, is taken up, and I do not know much of the talk of the place to enable me to give you much information of persons, &c., except of changes: Roberts, the prothonotor, is superceded by Mr. Blaney; Black is a judge;

Morris has married Miss Ritchie; Vining is with Randel at the north; Little Riddle took to the sea, and has returned rolled out a tall fellow; Chas. Vandike is dead; the barber worked through the cholera, and still shaves; the Janviers are still there; Judge Clayton now resides at New Castle; young Rodney has built himself a new house; and I believe these are all the principal changes that have taken place since you left. Randel still, on account of his suit, retains his house. Please excuse this brevity, but it contains as much as if spread out at length.

I hope you are enjoying a good salary. Mr. C. Heyer, the president of your bank, was on here a short time ago, and came to see my mother, and, unfortunately, I was away, or should have written to you by him. I am much obliged by your offer of serving me, and I will trouble you, if agreeable, to call at the office of the American Insurance Company, and ascertain of the time they will make a dividend, and the probable amount, and the state of their present prospects of business, and any information that you may be made acquainted with respecting that concern, and you will much oblige. I cannot inform you of Dr. Erwin's direction, but will ascertain and let you know. I shall be glad to hear from you. I should be glad to hear from you, and if I have any thing to communicate, I will not fail in letting you know it. In the mean time,

I remain your friend,

WM. LINN BROWN.

P. S.—Mrs. and Miss Massey are at Ithaca with Randel, who I expect on here shortly, and will go with him to Delaware.

Adieu, W. L. B.

Letter from Wm. Linn Brown to John Telfair, proved by the latter, and referred to in his testimony.

W. H. KEATING, *Examiner*.

[*a* 236] C.

PHILADELPHIA, *Nov.* 2, 1833.

DEAR SIR: We are now preparing for the final trial of Mr. Randel's cause vs. the Chesapeake and Delaware Canal Company, which will come on certainly on the 21st of this month.

We have already a judgment on part of the contract. Being now engaged in the accounts, it being necessary to make out an exact statement of the expenses incurred in the prosecution of the suit to get *all* the damages, I am very desirous that you would give me on receipt of this a statement as near as you can, of the *sums* paid to you, and the *periods* of payment, and whether in cash or otherwise. It will be necessary for me to have this statement before the full account can be made out, and I hope you will send me the statement in time, as near and as correct as in your power, as I will be obligated to delay until I get it.

If your evidence should be requisite, I suppose you would not object to devote three or four days to coming on to New Castle.

You would be pleased to do so, no doubt, as it will be a short journey, and at this season a very pleasant one, and you would see old friends, &c.

In case it should be necessary, it would be arranged as far as we are concerned, to make it convenient and agreeable for you to do so, and I would be glad to hear from you on the subject when you send me the statement.

Your letter to Dr. B. K. Irwin is attended to, and hoping to hear from you in reply,

I remain,
Yours, respectfully,
WM. LINN BROWN,
No. 112, *Filbert street, Philadelphia.*

(C.)—Letter from Wm. Linn Brown to John Telfair, proved by the latter, and referred to in his testimony.

W. H. KEATING,
Examiner.

[*a* 237] D.

PHILADELPHIA, *Nov.*, 1833.

DEAR SIR: I received your letter in answer to mine, with general statement. You say in your letter that you could come on if *absolutely necessary.* I am now making out all the documents necessary for an exhibition of the amount over and above the receipts from the company that has been expended by Mr. Randel. To do so with accuracy and certainty, it will be *necessary absolutely* to have an explanation from you of the character and amount of your entries and postings in the books, to prove the amount of expenditure, &c.

This is now *vitally important*, as we are now on the eve of a final trial which will be early next week, and will give us scarcely time to make up our statement. The amount of our judgment will be large, and the only difficulty now with us is, to make out the amount expended by the contractor as near as may be, by original entries and vouchers to enable us to do so. The suit is marked down for trial on Thursday morning *positively*, and it will be necessary for you to be at New Castle on Monday if possible, and I will be there at that time. The labor will not be *great*, and the loss, if you do not come on, may be incalculable. Your expenses will not be great, and you can be in New Castle the same day that you leave New York, and the cost will be defrayed by Mr. Randel.

If you come on Monday, you will not be detained from New York more than through the week to all probability.

You will see the importance of your coming on, and you will at this fine season find it a pleasant jaunt, and will not perhaps be engaged more than three hours a day.

I have by this day's mail written to Mr. Heyer requesting leave of absence for you, and state to him the importance of the case. He will no doubt consent.

You will please state to him also, the absolute injury to be sustained if you should not be allowed to come.

Yours, respectfully, in haste,
WM. LINN BROWN.

P. S. Write to me on return of mail, directed to Philadelphia, No. 112, Filbert street.

(D.)—Letter from W. L. Brown to John Telfair, proved by the latter, and referred to in his testimony.

W. H. KEATING,
Examiner.

[*a* 238] E.

NEW CASTLE, *Dec.* 30, 1833.

Monday morning.

DEAR TELFAIR: Mr. Randel received your letter this day. We are all again assembled here, and are looking for you.

The books are in court and we are now getting into the accounts. Mr. Lee has been examined, also Caleb Newbold and Paul Beck.

Now is the time for your testimony to be of benefit to Mr. Randel, and hope that you will come on immediately on receipt of this.

I enclose ($10) for you, and hope to see you on Wednesday or Thursday at latest.

In the mean time,
I remain, yours, &c.,
W. L. BROWN.

(E.)—Letter from W. L. Brownto John Telfair, proved by the latter, and referred to in his testimony.

W. H. KEATING.

[*a* 239] F.

WILMINGTON, *24th October*, 1836.

DEAR SIR: Please send me word as to your success, by the Wilmington boat of to-morrow (Tuesday) afternoon, if you fail there, that I may try individuals at a premium.

In haste, yours truly,
JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

P. S.—Get Mr. Hemphill's refusal, at a fixed price, for the whole lot, that I may have it fenced in; it depreciates daily, by having it dug, as is now done, into holes. There is not ground enough left on the lot to regulate it.

(F.)—Letter from John Randel, jr., to Wm. Linn Brown, proved by John Telfair, and referred to in his testimony.

W. H. KEATING, *Examiner*.

[*a* 240] G.

(G.)—Plan produced during the evidence of E. Jefferson, proved by him, and referred to in that testimony.

W. H. KEATING, *Examiner*.

[For plan—see original.]

[*a* 241] H.

NEW YORK, *Wednesday Morning*, *June* 7, 1837.

DEAR SIR: I arrived last night, and take this morning's boat to Albany, to take Mr. De Witt's testimony in a case of *fraud*, committed against me by Wm. Linn Brown, for $10,000. I need your testimony also, but do not know where to find you; I therefore will drop this note in the post office, as the best means to accomplish that object.

I will thank you, dear sir, upon the receipt of this, to come to me at Albany, (City Hotel,) without a moment's delay, as I can remain there only two days, when I must return to court at Philadelphia. I will pay your time and expenses. I have also in my possession some fifty dollars for your fees as witness in my canal case, which I will pay you. Do come immediately, and call upon Mr. De Witt at Albany. Present me to Mrs. Telfair.

In haste, your friend,

J. RANDEL, Jr.

Mr. JOHN TELFAIR.

(H.)—Letter of John Randel, jr., produced before me, proved by Mr. John Telfair, and referred to in his testimony.

W. H. KEATING, *Examiner*.

(*Endorsed A* 206, *to a* 242.)

Deposition of Nathan Bunker.

Examined by J. R. Tyson, Esq.

[*b* 1] Nathan Bunker, of the city of Philadelphia, of competent age, a witness adduced on the part of the respondent, being duly affirmed, according to law, doth declare and say:

I think I became acquainted with Mr. Brown some time in the year one thousand eight hundred and thirty-four or thirty-five—and with Mr. Randel about the beginning of the making of the canal, of the Chesapeake and Delaware Canal Company, in eighteen hundred and twenty-six or twenty-eight. I became acquainted with Mr. Brown in consequence of the very active part I took to vindi-

cate the rights of the public, as I conceived it to be; and William Brown, as the counsel of John Randel, called upon me at my counting-house, probably on account of seeing my name attached to the proceedings of the citizens of Philadelphia, and announced himself as the counsel of John Randel, jr.

I can't distinctly recollect what the object of his first visit to me was, but I think it was to rebuke me for some statements of mine in the paper against Mr. Randel, in which conversation, he [*b* 2] very earnestly and ably advocated the cause of my friend, John Randel, jr.

Scenes in which I felt no particular interest in recollecting all that occurred, have left but indistinct impressions.

This led to various interviews between Mr. Brown and myself afterwards, and to various exertions on our part, to become the medium of communications between J. Randel, jr., and the Chesapeake and Delaware Canal Company. I mean on the part of Wm. Linn Brown and myself.

I believe Jno. Randel, jr., and the company had no intercourse. I understood they could have none. I had myself an interview with J. Randel, at my own fire-side, very early in the controversy, (in the stage of it that I took part in,) in which I had hoped some good might result. When I conversed with some of the canal company the next day, I found they were extremely wide apart in their feelings, and all my efforts at a negotiation afterwards, were made through Wm. Linn Brown, with whom I made several strenuous efforts to compromise the case between them. At the time when the settlement really did take place, I am not sufficiently acquainted with the circumstances to speak positively about it, but suffice it to say, that his efforts were exceedingly zealous in favor of John Randel, jr., in all the prior negotiations that I had with him. I myself had no part in the negotiations that finally concluded the business. I began, some time before the negotiation was closed, to despair of any being made, and to get my feelings disentangled from it. I found there was an exceedingly hostile feeling between John Randel and the company. When I discussed with either party the matter in controversy, I found a very angry feeling be- [*b* 3] tween the parties, and no desire to conciliate; and after I had written several letters to the Governor of this State, and to several of the representatives of the State, I found it did no good, and I therefore very much made up my mind to abandon my exertions. I never saw Mr. Brown in interview with the canal company; but, whenever I conveyed to them any communications from Mr. Randel, through Mr. Brown, my impression was, that they were received with favor. They considered him as a very honorable young man, and disposed to effectuate a compromise between them and his client. I am not able to say how often they saw him, for I never saw them together, but I heard them speak of the conversations they had with him; they quoted his observations, so as to lead me

to infer, that they were in habits of intercourse, of exchanging opinions. They quoted some of his extravagant demands, which led me to think, sometimes, as they did, that he advocated demands which were sometimes extravagant.

There was no other mediator known to me, in this city, besides Mr. Brown, during the excited state of feeling between Mr. Randel and the company.

Question by Mr. Tyson.

What is your opinion as to the extent of influence which Mr. Brown exerted, to bring about a compromise?

Answer. I am not able to say. I have no information. It would be but an impression, which could have no weight, having never been present at any interview between him and the canal [*b* 4] company, if any such did take place. The impression on my mind was derived from the course of my interviews with him, of the zeal he manifested for Mr. Randel; but what influence it exerted upon them I cannot say, not having been present at any of the conversations between him and the directors. My own impression, which I received, was only from the zeal he manifested with me. I should infer, from the zeal he manifested before me, that he would have shown the same before them; but not having been present at any conversation, I could not state any thing that might be considered as evidence.

In the frequent intercourse which I had with Mr. Brown, he has repeatedly stated to me, (speaking of Jno. Randel's oppressed state, and of his poverty,) that he had never received any compensation for his services; that it was to be contingent: if he [*o. b. m.*] never recovered against this company, he would get nothing—that was the impression left on my mind. [Objected to by Mr. Ingersoll.]

I once had an interview with Jno. Randel himself, in Paul Beck's counting-house, accompanied by one of my colleagues on the town meeting committee, Jno. L. Hodge. In the course of our discussion together, as to the large amount of his claim against [*b* 5] the company, Jno. Randel, jr., stated one of the objects he had in view, in opposing the trade, was to compel the citizens of Baltimore and Philadelphia, who had a great interest in this trade, to contribute to make up his claims against the company. I stated to him that his demand was a very large one; he was very much mistaken if he thought the citizens of Philadelphia and Baltimore would contribute to make up such an amount. I do not remember the exact amount; I think it was between two and three hundred thousand dollars.

On that occasion he observed, that if he recovered the whole amount of his claim against them, *that* after paying his debts that he owed, and his counsel fees, *that* he would have but a small sum left, comparatively. He had several lawyers engaged, he told me;

that he would have but a small compensation left for the time he had spent in pursuing his claim against this company; and I think it was upon that occasion that he told me he was to pay his friend and counsel, Jno. M. Clayton, ten per cent. on the amount he recovered. I use the term, *on that occasion*. I cannot forget the subject, because I had a correspondence with Jno. M. Clayton on the subject.

I have no recollection that he stated what compensation he was to pay to his other counsel, except the general term I
[*b* 6] have used, that when he paid his counsel fees and his debts, he would have but little left. This conversation with Mr. Brown, about the contingent compensation, occurred very soon after this interview that I have been describing. He called at my counting-house, to notice some remarks which it was known I had published in the papers. He stated that John Randel was poor and oppressed.

I think it was in the year thirty-five that this conversation occurred; it may have been in thirty-four. I think I have seen Mr. Randel's handwriting; I do not know Mrs. Randel's.

[Mr. Ingersoll declined cross examination on the part of the complainant.]

N. BUNKER.

Taken, affirmed, and subscribed before me, this seventh day of November, A. D. 1837.

W. H. KEATING, *Exam'r*.

The annexed thirty-four letters and other papers were then presented, and admitted as evidence.

W. H. KEATING, *Exam'r*.

On counting them over, I find but thirty-three (33).

W. H. K.

(5.)

WELSH POINT, 10*th May*, 1836.

WM. LINN BROWN, ESQ.

DEAR SIR: I received yours of the 7th yesterday, before
[*b* 7] I left New Castle. I have obtained, to the petition to the Governor of Delaware, the signatures of the Mayor of Baltimore, the president of the first and second branches of the city councils, and also Governor Vezey, of Maryland, and also all the grand jury and members of the legislature from Kent county, including Governor Polk. The petitions from Sussex have not yet been sent to me. We will, I think, have as many petitioners as we desire from New Castle county.

Governor Bennett was still living yesterday morning. In relation to clay—I have had a tub built at New Castle, and it only wants to be iron hooped before we can use it at this place, and thereby, I

think, insure a certain supply of clay at Philadelphia for the season. I expected and intended to have gone yesterday to Philadelphia, to get iron for this tub, and also to get some money, but found it indispensably necessary, if possible, to be at Baltimore to-day, to make my report upon supplying that city with water.

I enclose a list of the prices of iron wanted for hoops, which I will thank you to have sent to me with the bill at New Castle, *immediately*, by the steamboat, with a letter to Mrs. Randel, so that she may have it sent at once to the blacksmith or Mr. Williams, the carpenter, at that place, to be put on the tub.

If you could, at your bank, have one or both of the annexed notes discounted, it would relieve me very much; the day of payment will arrive *after* my settlement with the canal company, so that I would not need to have it renewed.

Yours truly,

JOHN RANDEL, Jr.

(6.)

[*b* 8] BALTIMORE, *Tuesday night*, 26*th April*, 1836.

DEAR SIR: I have obtained an application to the Governor of Delaware for convening the legislature of that State, signed by the *mayor* and the presidents of the first and second branch of the city council of Baltimore, and agents, &c., of canal packets, &c. To-morrow I intend to call upon Governor Vezey, on the Eastern shore, for a letter from him to Governor Bennett also.

I wish you would get Messrs. Biddle, &c., to procure an application to the Governor of Delaware, from the *Governor of Pennsylvania* and the city councils of *Philadelphia and Cambden*, and do it promptly. General Forman, Governor Bennett's brother officer, is here, and has written to the Governor of Delaware also.

In haste, yours truly,

J. RANDEL, Jr.

WM. L. BROWN, ESQ.

(8, 9.)

BALTIMORE, *April* 25, 1836.
Monday morning.

DEAR SIR: I arrived here on Saturday, and intend to go to Washington by this morning's cars. I have been informed that some of Governor Bennett's friends are opposed to a call of the Legislature, and that the petition for the Peninsula railroad will not accomplish as much as that for the removal of obstruction to the trade of the canal. I have sent a copy of the former petition to St. George's, Smyrna, Dover, &c., for signature. I intend to get Mr. Clayton to induce the Members of Congress from Maryland to petition the Governor on the subject of the canal, and I expect to get the action of the Corporation of *this* city, also, in relation thereto. I wish you

to call upon Messrs. Scott, Biddle, Chauncey, and Lewis, and suggest to them to have the Corporation of the city of Philadelphia, as well as the Chamber of Commerce, petition the Governor of Delaware to call the Legislature of Delaware for the purpose of passing the law, so as to restore the canal trade to that city. It is thought that, unless a strong petition is obtained, the Governor WILL NOT call the Legislature.

In haste, yours truly,

JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

(10.)

BALTIMORE, *Monday night,*
April 25, 1836.

DEAR SIR: I have just returned from Washington with an application for the Governor of Delaware to call the Legislature, signed by the Maryland, Delaware, and Pennsylvania delegation that were there, viz:

John J. Milligan	John M. Clayton
J. R. Ingersoll	Arnold Naudain
Joel B. Sutherland	Sam'l McKeem
Robert H. Goldsborough.	

Also Richard Peters.

And I have enclosed it to Mayor Stockton to deliver to the Governor. Please get the captains of the steamboats and the Corporation of Camden to petition; also the owners of packets.

Mr. Clayton suggests the following for the petition to be signed by the citizens:

(Copy.)

"*To his excellency the Governor of the State of Delaware:*

"The undersigned having learned that a provisional agreement has been made by and between the Chesapeake and Delaware Canal Company, John Randel, Jr., and other creditors of that company, which requires the assent of the Legislature of the State of Delaware before it can be carried into execution, but which, when sanctioned by legislative provision, will free the canal from all obstructions growing out of the protracted law suits between said parties, respectfully request your excellency to convene the Legislature before the first day of June next for the purposes above stated."

In great haste, yours truly,

J. RANDEL, Jr.

WM. L. BROWN, Esq.

(12.)

PHILADELPHIA, *February* 20, 1836.

I, Miss Sibella Stone, of Wilmington, Delaware, agree to let unto Mr. John Randel, Jr., of New Castle, Delaware, my house

now occupied by Governor Bennett, situate No. —, on the west side of Market street, in the city of Wilmington, for one year from the twenty-fifth day of March next, (when the present tenant is to vacate the same,) at the yearly rent of two hundred and fifty dollars, the said Sibella Stone to pay the water-rent, and to allow the said John Randel, Jr., to have done any necessary and proper repairs, to be deducted from the rent; the rent to be paid quarterly.

S. A. STONE.

Witness: Wm. Linn Brown.

The blinds in the back and front parlor, and the lamp in the entry, belong to the house.

(13.)

New Castle, *February* 13, 1836.

Dear Sir: I received by Peter your letter of this morning, in which you say that the rent of the house occupied by Governor Bennett is $250. If you can get it for me for a year I will thank you to do so.

I wish you also to engage of Mr. Hemphill 50 feet in width off the upper end of his Wilmington lot, at $75, or *less* per foot for the second 25 feet, bounded on the north by the Cross street, as soon as he can give a clear title for it. I am in no particular hurry, you know; May or June will do better than now, on account of the first payment.

Yours truly,

JOHN RANDEL.

Wm. Linn Brown, Esq.

P. S. I expect to go to Baltimore before I go to Philadelphia.

(15.)

New Castle, *February* 8, 1836.

Dear Sir: Will you have the kindness to have my notice published in the *Harrisburg* newspapers. I will write to you about the Wilmington lot in a day or two.

Yours truly,

JOHN RANDEL, Jr.

Wm. Linn Brown, Esq.

(17, 18.)

New Castle, *February* 3, 1836.

Dear Sir: I send by Mr. Blaney a few New Castle Gazettes, containing my notice to "The People" of the decision in the U. S. court in my favor, for you to have the kindness to have *re-published* in *all* the Philadelphia newspapers that have not already published it. Please attend to this. I expect to be with you in the course of a week, and will tell you particulars.

Yours truly,

JOHN RANDEL, Jr.

Wm. Linn Brown, Esq.

(19, 20.)

NEW CASTLE, 3*d December*, 1835.

DEAR SIR: Mr. Clayton (who is now at Washington) has instructed me to get the *following* copies of the record in Philadelphia, to prove my acquiescence in the loans.

(Copy.)

"Also, if your attorney, Mr. Ingraham, has obtained judgment in Philadelphia, get a copy of the record *there* also, and if he has not, at all events get a copy of the record of the suit there so far as it has gone. Also, get a copy of the record of the original suit brought there in 1826, and of all doings there. I want all these records for the suit in Maryland; they will show how we have *acquiesced.*

Send all these papers to John Scott, esquire, St. Paul street, Baltimore, as evidence on our part, on the point of acquiescence."

Will you, dear sir, have these papers copied, properly certified, and forwarded to Mr. Scott. I have been confined to the house for three weeks, but am now recovering, and hope to be able to go to Syracuse next Monday or Tuesday, and will call on you on my way.

Mr. De Witt has written to me to take *Francis* to Ithaca. I am not yet certain whether I will go further than Syracuse till the last of the month. Please mention this to Mrs. Peters.

Yours truly, JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

(21.)

UNITED STATES HOTEL,
Wednesday night, 7th October.

DEAR SIR: Messrs. J. Clayton and Scott want the digest of the *Delaware laws*, (for the year 1829 I believe,) containing the *attachment* law of Delaware; also, volume No. seven, of the Delaware laws if you have it, as they want it, or them *now*, and to be used by them to *night*. Please take some pains to send them by the bearer.

And oblige, your obedient servant,
JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

(22, 23.)

NEW CASTLE, *Wednesday, 27th August*, 1835.

DEAR SIR: Mr. Clayton arrived yesterday; and to-day proceeds to Ballston or Brandywine springs. Please inform me by mail when Dr. Gillespy died, and who are his executors.

Please call at Mr. Dobson's book store, and ask whether they have collected for me the annual reports of the Chesapeake and Delaware Canal Company, that I spoke to his clerk about a week ago.

Yours truly, JOHN RANDEL, Jr.

W. L. BROWN, Esq.

(24, 25.)

NEW CASTLE, *Monday, 25th August*, 1835.

DEAR SIR: I have this moment returned from Dover. Mr. Clayton and children, have been sick with the bilious fever. I return the volume of Barnwell and Adolphus, it is not the book he wanted; he has one like the one you sent; your book (page 185) contains only the *marginal note*, and the whole case he wanted to see; if you can borrow the book he wants *for yourself* for a few days, he can read it, as he will be in New Castle or Philadelphia by Wednesday, of this week, on account of his health.

Mr. Clayton wants the same papers in relation to Rob. Wharton, deceased, that you got in relation to Silas E. Weir. Please have them made out immediately, and when done send them to me here by *mail;* and if possible send me by *mail* to-morrow, the *names* of Mr. Wharton's executors or administrators, to be put in the bill, and the date of his *death* to put in the bill; we will give the lock contract an overhauling, and rely on your testimony to aid in proving what you suggested.

I enclose a letter from Mr. Clayton.

Yours truly,
JOHN RANDEL, Jr.

WM. L. BROWN, Esq.

(26.)

STEAMBOAT ON ELK RIVER,
Friday, 21st August, 1835.

DEAR SIR: As I intend to go to Dover to-morrow morning, I will thank you to send me by Mr. Green, the fireman of the steamboat, to-morrow, the papers relating to Mr. Silas E. Weir, as no mail goes till Monday, be particular to send them to me in the morning; the boat trembles so much from rough water, I can scarcely write this much.

Yours truly,
JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

(27, 28.)

NEW CASTLE, *Wednesday, 20th August*, 1835.

DEAR SIR: I go this morning to Baltimore. Please call every afternoon after the arrival of the boat for a letter from me, with further instructions from Mr. Johnson to Mr. Fisher.

In haste, yours truly,
J. RANDEL, Jr.

WM. LINN BROWN, Esq.

(29.

BALTIMORE, *Thursday night*,
August 20th, 1835.

DEAR SIR: I return to New Castle to-morrow morning; Mr. Fisher is here, he returns in the morning. You need not call upon him again, he has agreed to return to Philadelphia. Copy all the papers demanded; come with them here next Tuesday or Wednesday, and go with them and Mr. Scott to Bell-Air, to see Mr. Johnson; and then, if Mr. Johnson directs it, give us the papers. They are *greatly alarmed* at our asking for a copy of the power of attorney for proxies, and the proceeding in relation to the loan.

Yours truly,
JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

(30.)

NEW CASTLE, 16*th August*, 1835.

DEAR SIR: I enclose Mr. Johnson's requisition on the canal company. You will perceive that the papers are to be given to Mr. Scott, (or myself, of course,) and not inclosed as before to Mr. Johnson. Please inform me by the bearer, when Mr. Fisher said he would have the papers in the list of *yesterday* ready for me.

Yours truly,
JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

(31, 32.)

BALTIMORE, 11 *August*, 1835.

DEAR SIR: I proceed to Mr. Johnson at Annapolis, to-morrow morning, to obtain his requisition upon Mr. Fisher to furnish the papers, &c. in the annexed memoranda of Mr. Scott, viz:

"Wanted 1st. The number of shares of stock subscribed by the United States, and also by the United States Bank, to be added to the list of stockholders furnished by the canal company, together with the names of the persons who transferred the same.

"Wanted 2d. The amount of *loan* subscribed and held by each loan holder, and the number of shares of *stock* held by each stock holder, to be placed opposite their respective names on the lists furnished by the canal company.

"Wanted 3d. A copy of the notice or notices, if any, calling a meeting of the stockholders to take into consideration the propriety of a loan or loans.

"Wanted 4th. A copy of the votes and proceedings at such meeting or meetings.

"Wanted 5th. A copy of any power of attorney used at such meeting or meetings, and under which votes were given in favor of a loan.

"JOHN SCOTT."

Please furnish Mr. Fisher with a copy of the above five specifications; give him my compliments, and request him to have these papers prepared with the least delay, and I will pay the cost, whether Mr. Johnson orders them or not.

I am truly yours,

JOHN RANDEL, Jr.

WM. LINN BROWN, ESQ.

(33, 34.)

BALTIMORE, *Thursday*, 18 *June*, 1835.

DEAR SIR: Mr. Clayton has written to me to *buy* for him "Kid on Corporations," and also, "Wilcox on Municipal Corporations;" and to borrow for him "2d volume Barnwell and Adolphus Reports."

As he has written also for papers from Annapolis, I must go there for them the first boat; this will bring me to New Castle, Sunday morning; and I intend to go to Dover immediately, or at latest Monday's stage.

Will you get the books above mentioned, and send them to me at *New Castle*, in time for me to take or send them to Mr. Clayton?

Yours truly,

J. RANDEL, Jr.

WM. L. BROWN, ESQ.

Don't fail to write to me at New Castle on receipt of this.

(35, 36.)

BALTIMORE, *Wednesday*, 17 *June*, 1835.

DEAR SIR: Mr. Clayton has written for the *brief* of his which you have. Please mail it to him *immediately*.

Yours truly,

J. RANDEL, Jr.

WM. LINN BROWN, ESQ.

P. S.—I have engaged a vessel to take clay; it will arrive about Monday next at Philadelphia.

11*th May*, 1835.

It is my election, that all the persons who have been attached since November last, be held to plead, except those who will make special affidavits of all the facts relating to the payment of tolls, &c. by them.

JOHN RANDEL, Jr.

(37, 38.)

NEW CASTLE, *May 9th*, 1835.

MR. WM. LINN BROWN.

SIR: Mr. Randel requested me to say, that he wishes you to come to New Castle on Monday, as some of the captains may come the first day of the court. Capt. Sutton will be here.

Mr. Randel has gone this morning to Annapolis; he intends to return on Tuesday next. The inclosed notice to Mr. Fisher please serve upon him to-day.

Mr. T. Janvier will be in Philadelphia on Tuesday to attend to the commission.

Respectfully,

L. M. RANDEL.

(39.)

BALTIMORE, *Thursday night*,
5th March, 1835.

DEAR SIR: I now find that I must be at Annapolis till Saturday afternoon; of course cannot be at Philadelphia till Sunday night's mail, and serve the notices on *Monday*. This I now find will do if service is sworn to on that day. And I need not return the affidavit in that case till four days after.

I wish to see you at Champion's when the mail arrives, about 5 or 6 o'clock in the afternoon of Sunday.

In haste, yours affectionately,

J. RANDEL, Jr.

WM. LINN BROWN, ESQ.

P. S. The notice is only to be served now upon Robert M. Lewis, Isaac C. Jones, and Henry D. Gilpin, and also upon *each* of the trustees to the four mortgages, viz: James Parker Norris, Horace Binney, Joseph Hemphill, Nich. Biddle, John Read.

(40.)

NEW CASTLE, 1*st March*, 1835.

(*Confidential.*)

DEAR SIR: As I must return in the morning to Baltimore, and thence to Annapolis, I must rely upon your attending to the following business for me, without disclosing it to *any person whatever*. If the ice had not prevented, I should have gone yesterday to Philadelphia to attend to this business myself.

1st. In June last the following persons were elected officers of the Chesapeake and Delaware Canal Company, viz:

Robert M. Lewis, president. Isaac C. Jones, John Hemphill, John C. Smith, Henry Cope, Algernon S. Roberts, William Platt, William Phillips, Henry D. Gilpin, Thomas Biddle, directors. S. Griffitts Fisher, secretary and treasurer.

1st. I wish you to ascertain whether any, and which of these directors have resigned, and who is elected in their stead?

2d. Whether S. Griffitts Fisher is now treasurer as well as secretary?

3d. Where each of the above named gentlemen reside—not by looking at the *Directory only*, but by going to the very house of each of them, and so noticing it, as to find it again after dark.

4th. Next week, Saturday, 7 March, be at Champion's hotel all day, from 8 o'clock in the morning till 11 o'clock at night, for the purpose of taking an officer (who will call upon them with a letter) to each of those houses.

A certain notice must be served on each of them on that day before 12 o'clock at night, and the officer must return to Annapolis in less than forty-eight hours thereafter. Keep all this to yourself. Write me *immediately* by letter, directed to me at Barnum's hotel, Baltimore, answers to the *two first* interrogatories. If you are not well enough to attend to the 2d and 3d directions, get some faithful and trusty deputy sheriff to do so, and you be at Champion's to introduce him to the officer who will call upon you there with a letter from me.

Please give Mr. Ingersoll the inclosed note and check in exchange for the one he holds.

Also call upon Mrs. Abbott, and say, Mrs. Massey did not authorize you to give her $90 a year for her Wilmington rents.

In haste, yours truly,

JOHN RANDEL, Jr.

WM. LINN BROWN, ESQ.

(41, 42.)

NEW CASTLE, *24th January*, 1835.

DEAR SIR: I have just written a letter to you which I intend to send by the stage driver, it ought to be delivered to you to-morrow afternoon. I write this for fear the other may not arrive.

I fear that *any action* against the canal company while my bill is before the Delaware Legislature, may be used to my prejudice; on that account I wish you to stop all proceedings for the present, and until I write to you again. Please attend to this request *at once*, and write to me at *Dover* what you have done, and whether this proceeding will delay me more than *one month*. What month do the Philadelphia courts adjourn? I start to-morrow for Dover, I expect.

In haste, yours, truly,

J. RANDEL.

WM. LINN BROWN, ESQ.

(43, 44.)

MARPLE, CHESTER COUNTY,

10 *miles from Philadelphia*, *Monday*, *22d Sep.*, 1834.

DEAR SIR: I am confined here by increased indisposition. Mrs. Massey goes to the city to-morrow, and will deliver Mrs. Peters' letter and the $8. I hope all things go on well, and that you are careful of your health. Please write me upon receipt of this how business is going on. Direct the letter to be retained by Mr. Champion, till I arrive. Present me to Benjamin M. Sutton, the sheriff.

Yours truly,

JOHN RANDEL, Jr.

Endorsed: "Captain Black will oblige Mr. Randel by delivering this letter."

Addressed: "Mr. William Linn Brown, Delaware City."

(45.)

CHAMPION'S,
Sunday afternoon, 7th Sept. 1834.

DEAR SIR: I have just arrived, but am not well enough to walk up to you, if you could come to me you would oblige,

Your ob't. serv't.
JOHN RANDEL, Jr.

Mr. WM. LINN BROWN.

(46, 47.)

SALEM STEAMBOAT, NEAR DEL. CITY,
Saturday, 12½ *o'clock*, 6*th Sept.* 1834.

DEAR SIR: I received your two letters yesterday on my return from Col. Chambers's, for which accept my thanks. I conversed with many farmers and boatmen; no person blames *me*, all say I do right.

I am now on my way to attach the *canal* and all its appendages. The sheriff is at Delaware city waiting for me, and I have the fieri facias now in my pocket; the whole will be attached by night. The marshal sells on Tuesday. I am not certain, I may not have to call on U. S. Bank Monday to detect some *fraud* in their proceeding. I intend to write to-morrow.

In haste, yours truly,
J. R., Jr.

(48, 49.)

NEW CASTLE, *Wednesday*, 3*d Sept.* 1834.

DEAR SIR: I omitted to tell you in my letter of yesterday what the company's *verbal* proposal was like, by Mr. Gardner's explanation. The company agreed to have all the toll taken and put into the hands of two persons to be appointed by the company and myself, and held subject to the order of the court. Mr. Gardner did not know whether the company would or would not agree to consider this toll as *attached;* to get this proposal in *writing* so as to prevent misapprehension, was the cause of my going to Philadelphia to see Mr. Bunker. Mr. Bunker said he was of opinion that the company intended the tolls thus collected by agreement, to be placed in the same situation it would be by my present attachments, of course considered attached, but to prevent misapprehension, he agreed to get a resolution of the company. The company, he said,

yesterday was not willing to have, *at most*, more than *half* the tolls thus collected, or the tolls at the Delaware lock considered as attached. I then again requested him, if the company had any proposal to make, to make it in writing, that no other *could* be submitted by me to my *friends* as well as counsel.

Mr. Rogers says, that unless the tolls are considered to be attached, I can have no claim upon them, even after the money is in the hands of the persons appointed to hold the tolls, because it is by *attachment* only, that I pretend to claim or can hold the tolls.

In haste, yours truly,

JOHN RANDEL, Jr.

Mr. Wm. Linn Brown.

[50.]

Near Reeseville, Chester county,
31*st July*, 1834.

Dear Sir: You will oblige me by delivering *immediately*, to Charles J. Ingersoll, Esq., the enclosed letter.

I will thank you also to exchange the enclosed note for one he has for $260, dated 13th December, 1833, and pay the interest due thereon, up to the 13th August, together with the protest. For this purpose, I enclose you $15. You can retain the note and the change till you see me.

Yours, truly,

J. RANDEL, Jr.

Mr. Wm. Linn Brown.

(52, 53.)

Wilkesbarre, *Saturday*, 12*th July*, 1834.

Dear Sir: I have just arrived at this place with my wife and children; we intend to remain here till Monday morning, and be with you (if fair weather) Wednesday evening; will stop at United States Hotel, or foot of Arch street.

Yours truly,

J. RANDEL, Jr.

Mr. Wm. Linn Brown.

(54, 55.)

Ithaca, 22*d February*, 1833.

Dear Sir: Your letter of inst. was duly received. I have written to Mr. Janvier, and enclosed him a note accepted by Mr. De Witt. He will draw the money, and give you between $90 *and* $100. You will please to give Mr. Clement $30 of it, and keep the remainder to bear your expenses to Mr. Clayton, at Washington, &c. &c. Please keep me informed of what is going on.

In haste, yours truly,

JOHN RANDEL, Jr.

Mr. Wm. Linn Brown.

(56, 57.)

OSWEGO, *August* 16, 1832.

DEAR SIR: Mr. Randel received a letter from Mr. Clayton, dated Dover, 3d August, of which the following is an extract:

"1. On what day was Wright's certificate dated?

"2. On what day was the declaration of abandonment made?

"3. What letters passed between you in the mean time?

"4. Did they employ you in the mean time to go on with the work? Specify how and what.

"5. If, by their acts or words, they waived the certificate of Wright, did you induce them to do so by requesting them to wait, and what did you do? What proof have you on these points? State particularly how much work you did between the date of the *certificate* of abandonment—what it cost—what you were paid—who employed you—who gave you orders, and what the orders were. How many men had you at work when the certificate was made? How many at the date of the abandonment? How many on every day between those dates? What were your expenses every day between those dates? Did the committee of *works then* visit the canal, and see the expense and work? Did you borrow money in the mean time?

"They have filed eighty pages of pleas—there is no demurrer."

Will you be so kind as to go to New Castle, upon the receipt of this letter, and take at once to Mr. Clayton those papers you prepared for him, and also (as far as any other papers you can find enable you) answer those questions.

The remaining twenty miles of road to be graded, is to be contracted for to-morrow. This keeps Mr. Randel very much engaged; he will, I hope, after to-morrow, have a little leisure, and write to you, and also attend to Stancliff & Draper's account.

Do write, and let us know if you see Mr. Clayton, and what is to be done. Will the suit be tried this August term, or will the cholera prevent the court sitting?

Our best respects to your mother and brother.

Very respectfully, your friend,

L. M. RANDEL.

Mr. Randel will thank Mr. Brown to have the trunk taken from the bank to our house before it is opened, and, to prevent the possibility of losing a single paper, or getting them mixed with other papers, have the trunk opened in one of the parlors, and when you have finished your examination, lock it and have it taken to bank again.

L. M. R.

(58, 59.)

NEW YORK, *Sunday morning*, *5th December*, 1831.

DEAR SIR: I have just arrived from Ithaca, and expect to be with you to-morrow evening. I hope you will be able to go with

me the next morning to New Castle. Please to have in readiness the notes of testimony got by you from Mr. Chauncey, to sustain my brother's testimony in the case of Jared Leavenworth vs. John Randel, jr., and vice versâ. Enquire of Marcus C. Gould, stenographer, N. Eighth, near Market street, whether he can attend to take down my testimony. The court opens 12th instant.

Please present me to your good mother.

In haste, yours truly,

J. RANDEL, Jr.

Mr. Wm. Linn Brown.

Endorsed—*b* 1 to *b* 7.

John Randel, Jr., vs. William Linn Brown. } *In Equity.*

Circuit Court United States, April session, 1837—*No.* 1.

Interrogatories for witnesses who may be produced and examined on behalf of the defendant, under a commission to Boston, in the State of Massachusetts:

1st. Do you know the parties above named, or either of them, and how long have you known them? In whose service was the said Brown engaged when you became acquainted with him; and when, and where, did you become acquainted with him?

2d. In what manner was the said Brown employed, at the time specified, in answer to the first interrogatory, and for whom?

3d. Do you know what compensation, if any, the said Brown was to receive from the said Randel? If yes, was it a certain salary, or a contingent compensation? If contingent, of what amount, and dependent upon what event? What have you ever heard the said Randel say of either of the matters inquired of in this interrogatory? Was any thing said by Randel, as to who was the debtor, himself or Brown, and was it in a small or large amount? Was any thing said by the said Randel about payment? If yes, when was it to be made, by whom, and under what circumstances?

4th. Was there any thing peculiar in the services performed by the said Brown for the said Randel? Were these services easy or difficult? State the nature of these services, so far as you know them.

5th. How did you become acquainted with the said Brown? What opportunities had you of judging of the extent and character of the services rendered by him, Brown, to the said Randel?

6th. Were you or were you not in the service of the said Randel? If yes, what was its nature, and how long were you employed? Did you act under the direction of the said Brown, or he under yours? State who had the superintendence, and to what extent?

7th. Who paid the expenses of the said Brown, during the time you knew him, while in the service of the said Randel?

8th. Is or is not the said Randel indebted to you? For what, and to what amount? Is or is not the said Brown indebted to you?

9th. Do you know any thing further, that may be material to the respondent, Brown? If so, set forth the same fully and at large, as if you had been more particularly interrogated thereto.

J. R. TYSON,
Solicitor for Respondent.

November 6, 1837.

Commissioners on the part of respondent at Boston: Theophilus P. Chandler and Peleg W. Chandler, both, or either of them.

A true copy from the original.

FRA. HOPKINSON,
Clerk Circuit Court.

November 25, 1837.

Depositions of witnesses produced, sworn, and examined, on the eighth day of December, in the year of our Lord one thousand eight hundred and thirty-seven, at the office of Theophilus P. Chandler, No. 4, Court street, in the city of Boston, in the Commonwealth of Massachusetts, by virtue of a commission issuing from the Circuit Court of the United State, for the eastern district of Pennsylvania, in the third circuit, directed to Theophilus P. Chandler and Peleg W. Chandler, and to either of them, for the examination of witnesses, in a certain cause depending in the said court, wherein John Randel, jr., is complainant, and William Linn Brown is respondent.

I, Job W. Folwell, of Lynn, in the Commonwealth of Massachusetts, shoe dealer, aged about forty-four years, being produced, and cautioned, and examined, and sworn to tell the truth, the whole truth, and nothing but the truth, according to law, and being called on behalf of the respondent, depose and say, as follows:

Interrogatory 1st. To the first interrogatory on the part of the respondent, I answer as follows: I have known the parties to this suit since the year eighteen hundred and thirty-four. I first became acquainted with Brown in the summer of 1834. I think in June or July, in Delaware city, in the State of Delaware. Mr. Brown was then in the employ of John Randel, jr., the complainant in this suit.

2d. To the second interrogatory on the part of the complainant, I answer and say, that Mr. Brown was employed by Mr. Randel in attaching tolls on the Chesapeake and Delaware Canal.

3d. To the third interrogatory by the same, I answer and say, that I do know what compensation the said Brown was to receive, and that it was a contingent compensation. I have heard Samuel Sutton say, that the said Randel told him that it was to be two and one-half per cent., on the amount recovered by Randel, in his action against the said canal company. I have heard the said Randel say, that he was indebted to the said Brown in a large amount, and

that he would settle and pay him when he got a settlement with the company. Randel also told me that he was indebted to the said Brown, in a per centage on the amount to be recovered on his judgment against the said company. Mr. Randel told me he was indebted to Mr. Brown in a very large amount. He told me he was to pay the said Brown when he obtained a settlement with the canal company.

4th. To the fourth interrogatory by the same, I make answer and say, that the service performed by the said Brown was very peculiar and difficult. It consisted in attaching all the tolls, day and night, and attending to the other duties connected therewith. In this business Mr. Brown was continually endangering his life, the officers of the boats being armed, and threatening to take the lives of those engaged in attaching the tolls. Chills and fevers were prevalent there at the time, and two of the persons employed were taken sick and obliged to leave.

5th. To the fifth interrogatory by the same, I make answer and say, that I became acquainted with Mr. Brown in Delaware city, where I then kept tavern, and Mr. Brown boarded with me. I served as deputy sheriff on the canal about two months. Mr. Brown was all the time on the canal, and we very frequently met.

6th. To the sixth interrogatory by the same, I make answer and say, that I have already stated that I was in Randel's employ, and the nature of the business. I acted under the direction of the said Brown in the said business, and the said Brown had the superintendence of the business of attaching tolls, and to him we went for direction and advice.

7th. To the seventh interrogatory by the same, I make answer and say, that Mr. Brown paid his expenses, during his engagement in the said business, himself. He also paid the other necessary expenses in attaching the tolls while he staid at my house. From my house he went to Mr. John Albertson's.

8th. To the eighth interrogatory by the same, I make answer and say, that the said Randel is indebted to me for services rendered by me, and for board of men in his employ, not including the said Brown. The amount due me is between seventy and eighty dollars, I think. The said Brown is not indebted to me. He paid me for his board.

9th. To the ninth interrogatory by the same, I make answer and say, that I do not know much in relation to this matter other than before set forth, excepting that the business of attaching the said tolls required Mr. Brown's particular attention on Sundays, as the officers of the canal boats took that opportunity of running through the canal.

JOB. W FOLWELL.

THEOPHILUS P. CHANDLER.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

On this 8th day of December, A. D. eighteen hundred and thirty-seven, personally came before me the aforesaid Job W. Folwell, produced by the said William Linn Brown, and, having been first examined, and cautioned, and sworn, according to law, to answer truly the foregoing interrogatories, and to tell the truth, the whole truth, and nothing but the truth, he made answers to the said interrogatories in the order in which they are written, and his several answers were written down by me as he made them, and in his presence; and, after the said answers were reduced to writing, I carefully read them to the said deponent, and he signed the same in my presence.

THEOPHILUS P. CHANDLER,
Justice of the Peace, and Commissioner mentioned in the foregoing commission hereto annexed.

Fees $10 00; paid.

Deposition of T. Leaming Smith, Esq.

[*b* 89] *Examined by J. R. Tyson, Esq., for the Respondent.*

T. Leaming Smith, Esq., of the city of Philadelphia, of competent age, a witness produced on the part of the respondent, being duly sworn according to law, did depose and say:

[Mr. Tyson having stated that the witness was produced on the part of the respondent to prove conversations between the witness and Mr. Brown; that the conversations had taken place after the filing of the bill and before the filing of the answer, and were offered to contradict the witnesses examined on the part of the complainant, but that neither those witnesses nor Mr. Randel were present at the conversations with this deponent, Mr. Ingersoll objected to this testimony, and the objection was sustained.]

Cross examined by Mr. Ingersoll for the complainant.

I remember money being paid by the Chesapeake and Delaware Canal Company. The only amount paid to Mr. Randel, on account of costs, was four thousand dollars, paid him on the eighteenth of July, eighteen hundred and thirty-six. I became treasurer of the company in November, eighteen hundred and thirty-five. I ceased to act as such in the early part of February last, (1837.)

I resigned then. No money was paid while I was treasurer
[*b* 90] but that sum. I think no cash was paid on any other account. I have not examined with that object. Mr. Fisher resigned his situation of secretary and treasurer to the Chesapeake and Delaware Canal Company in November, eighteen hundred and thirty-five, and applied to me to fill his situation. I continued there till my resignation in the early part of February last. While I was there the sum of four thousand dollars was paid to Mr. Randel in cash on account of costs in the controversies between Mr.

Randel and the canal company. The money was paid on the eighteenth of July, eighteen hundred and thirty-six. No other money was ever paid to him at any time that I know of. A number of certificates of loan were issued by the company. Three certificates were issued first, on the first application of Mr. Randel, on the twenty-sixth of July, eighteen hundred and thirty-six. They were *written*, and for five thousand dollars each; they were substituted by others afterwards; they were made out in that form to accommodate Mr. Randel. The books with printed certificates not being ready, they were subsequently cancelled, and printed certificates issued in their stead.

Re-examined by Mr. Tyson.

I answered that no other sums were paid while I was treasurer. I have knowledge of sums paid to other persons than Mr. Randel since I resigned, for I have examined the books. I have no personal knowledge—none but that which I derived from the books, and from conversations with the president.

By Mr. Ingersoll.

From either of those sources, I do not know of any payments made to Mr. Randel, at any time, but this sum
[*b* 91] of four thousand dollars. I did not consider certificates as payments in cash.

By Mr. Tyson.

I cannot say to what amount certificates were issued to Mr. Randel. I know that certificates were issued to a considerable amount; I cannot say to what amount.

T. LEAMING SMITH.

Taken, sworn, and subscribed, before me; the examination being commenced on the 8th of August, 1837; adjourned over to the 20th of September, and completed on the 5th of October, 1837.

W. H. KEATING, *Examiner*.

Deposition of Samuel Sutton.

Examined by J. R. Tyson, Esq.

Samuel Sutton, of Philadelphia, of competent age, a
[*b* 92] witness adduced (a second time) on behalf of the respondent, being duly sworn according to law, doth depose and say:

The conversation which is mentioned in my former deposition as being held in an office, was held in an office that we had at Delaware city. Mr. Randel rented the office for our use. It was in Mr. Randel's office that the conversation occurred. The conversation in regard to the per centage, was between Mr. Randel and Mr. Brown; I cannot now state the amount of the per centage.

In relation to the assignment of a judgment to Mr. Brown, by Mr. Randel, of which I spoke, the conversation was as follows: Mr. Randel observed, that before he left there he would make an assignment of part of his judgment to somebody to whom he was indebted—to make oath in his absence; and I am under the impression, at this time, that he would make an assignment to Mr. Brown, of some five or six thousand dollars. I understood it to be, that the assignment was to be made for to enable Mr. Brown to get, as I understood, the money.

(Here the witness was interrupted by Mr. Ingersoll, who objected to the witness giving what he understood.)

Mr. Randel stated that he was about to make an assign-
[*b* 93] ment to Mr. Brown, of some five or six thousand dollars—I disremember the amount—to enable him to get money to liquidate part of his debt, to pay him part of what he owed him. That is the impression I have. He did not say anything about the amount that he was indebted to Mr. Brown.

I did not expect that it was the full amount he owed him, by his stating that he was going to make a transfer of some five or six thousand dollars; I could not pretend to say the words.

Questions by Mr. Tyson.

A.

Did Mr. Randel say whether the five or six thousand dollars that he intended to assign to Mr. Brown, was in part or in full of his debt to Mr. Brown. [Objected by Mr. Ingersoll.]

B.

Did he or did he not say that he was largely indebted to Mr. Brown?

I understood [here the witness was stopped by Mr. Ingersoll,] both these questions objected to by Mr. Ingersoll, on the ground that they are leading questions on a re-examination, but were admitted by the examiner. I cannot recollect exactly the words that Mr. Randel used. [Objected by Mr. Ingersoll.]

Question by Mr. Tyson.

What was the import of his words? I judge that it was [*o.b.m.*] in part pay.

Mr. Tyson asked the question.

"Who did you understand from?"

The examiner tells him that the question should not be what the witness understood, and he is requested to change his questions, which he refuses to do.

The examiner then reads two or three times to the witness, the above questions, A and B, desiring him to answer what were the words of Mr. Randel, or if he does not recollect the exact words, what was their import, and not what were his inferences.

Mr. Tyson objects to this course, and abandons the examination. Mr. Brown (the respondent) withdrew with Mr. Tyson, but immediately before the examination was resumed, returned and desired it to be stated that he remains merely because he wishes to see Mr. Sutton home, as he is lame; and Mr. Ingersoll adds, [*b* 94] that Mr. Brown's presence is not required during the examination to see Capt. Sutton home, but that he considered him as attending the examination. The examiner thinks it right to add, that he does not conceive such conversations material to the examination, but as the parties desire it, he puts it down for the judgment of the court.

Cross examination (protesting against the examination of this witness, who has been examined at a former day at large, and his deposition completed and filed.)

I have seen Mr. Brown since my last examination—seen him at my house to-day—sometime before to-day since my examination; I disremember the day. One day he was going by, and stopped to see me twice, I believe, within two months; twice since my last examination before to-day. I do not say twice certain—perhaps once—it might have been three times. It is so seldom that he comes there, only since I have had my leg broken; my leg was broken since my examination. Before my accident occurred, he was in the habit of stopping at my house; he stopped there sometimes while I was there—sometimes while I was from home. I was not at his house at all at any time previous to the late examination. I met no where else with him but at my house, to my knowledge before. I stated that he came once to the wharf, while I was unloading. I met him once at Mr. Tyson's before I was examined. I was at Mr. Tyson's office before we came here on the day of the first examination. I stopped in. I don't know whether I met on any other occasion at Mr. Tyson's; I think I was at Mr. [*b* 95] Tyson's about six months ago. I do not remember whether we went together or met there; we were in company there. I stated I was there twice, I think not more; twice, I guess, altogether, excepting this evening. I stopped there as I came down here this evening with Mr. Brown. I don't know that Mr. Brown showed me a memorandum of what he thought I could say. He asked me the question that I was asked here to night, what I had said before. I read my testimony over; I think he was not there when I read it. I read it over at my house may be two or three weeks ago—two weeks ago, I think, he mentioned this thing to me, the question that I was asked, and I explained to him what I meant, as I thought it was not put down in deposition as what I meant it; he had nothing but a copy of the deposition, no remarks on it; he asked me what I meant—pointed out. I think he had no other paper but the depositions. I have no recollection of his having any other paper. (The witness in reading the deposition over to him, desires to add, that there were other depositions

with his, two or three he thinks.) I, one time, when Mr. Brown was there, I recollected something more—whether he took a note of it, I think he took a note with pencil, but the question has never been asked me. This was not the last time he was there, nor the last time before this evening; I could not pretend to say whether it was the first or second time that he was there, after my last examination.

I guess that memorandum lays in my house now—torn up, I believe. I think he just noted it, and did not take it away. He had his pencil out, and was drawing on a piece of paper. This matter, as to the assignment, was a few days, I presume, before.

[*b* 96] Mr. Randel made the assignment before he left there, so that we could go on issuing attachments. I have no recollection of the time when it was. I could not pretend to say how long after his trial, and after he got his judgment. Mr. Randel had a room he rented for an office; no body had any charge of it except us. I mean the deputy sheriffs and the prothonotary—the men whom Mr. Randel had employed; because he had forbid letting any body else come into the office, except the captains whom he had taken. It was in the tavern—the room was cleared up for our use. It was in Job *B.* or W. Folwell's house; he kept it. He gave him five dollars a month for it: it was the bargain he made at the time the conversation about the assignment was held. (I did not say it was in the room.) The conversation about the assignment was before *Albertson's* house, betwixt the house and the chamber of the canal. That about the per centage was before that—I cannot pretend to say how long before. I have no idea hardly how long it was. Mr. Brown, and Mr. Randel, and Job B. Folwell, and I were present. He kept the house; he was the deputy sheriff; he lives in Philadelphia—at least his family is here. I do not know where he is. It was in the conversation about the assignment, that I understood Mr. Randel to say he owed Mr. Brown some money. The conversation about the per centage was after the trial, and before the other conversation. I could not pretend to say the exact time it was; may be within a month or two months—not over two months. May be not a week; more than a week, I now recollect, because we had the other office rented. We rented another office. We quit that place, I think. I stated that I knew further something about the conversation, and Mr. Brown put it on a paper: he said it might or might not be of importance.

[*b* 97] That was after my first examination. I stated that he had a piece of paper, and was drawing birds or something on it; and he asked me what I meant? I went on to say something, and he took a note of it and left it with me. I think he left also the bird he was drawing. I don't know whether they were on the same paper, or whether they were not. I don't know what his reasons were for leaving it—he did not say. I am not certain that he left it; but my impression is, Mr. Brown, before my first examination, asked me what I knew about it. He may have

asked some questions, and I answered them. I think he did not show me a statement; if he showed me any thing, I think it was his proceedings with Mr. Randel—his answer to Mr. Randel's bill. He showed me where he had made a statement; that is his answer to Mr. Randel. He did not leave it with me. I had some business with Mr. Brown, and I think I saw this at his office. I had some business about some freight I was likely to lose, and wanted to get some advice.

Before I was examined the first time, Mr. Brown did not show or read to me what I was expected to say; he asked me what I knew about it. I was with Mr. Brown with Mr. Barre; that was at Mr. Tyson's office. He did not, to my knowledge, there or elsewhere, show me what I was expected to say. He asked me what I could say.

SAMUEL SUTTON.

Taken, sworn, and subscribed, this 5th of October, A. D. 1837.
Before me, W. H. KEATING,
Examiner.

The court having, after being informed of the facts that occurred at the time of the re-examination of Capt. Sutton, before
[*b* 98] the examiner, decided that the examiner should proceed to re-examine the witness in the manner desired by the counsel for the respondent, in whose behalf the witness was produced, taking down as well the questions as the answers, whenever they were objected to, and noting the objections. Capt. Samuel Sutton was produced a *third* time before the examiner, sworn and examined by J. R. Tyson, Esq., on behalf of the respondent—Joseph R. Ingersoll, Esq., attending for the complainant.

Question. Did Mr. Randel say, or did he not say to you, that he was indebted to Mr. Brown; and if aye, when?

[Mr. Ingersoll here excepted to the re-examination upon points already examined.]

Answer. He did.

At what time?

I don't recollect the time; while we were on the canal there; about the time he made an assignment to Mr. Brown.

Question. Did Mr. Randel say what he was indebted to him for?

Answer. I believe it was for services.

Question. Do you mean that you believe it was for services, or that you believe he said it was for services?

Answer. I believe Mr. Randel said it was for services.

Question. Have you any doubt about it?

Answer. No, sir.

Question. In what sum did he say he was indebted to him?

Answer. I never heard him say.

Question. Did he speak of the amount—whether it was a large or small sum?

Answer. I have no recollection of his saying any thing about the amount.

Question. Then he did not say whether it was a small or large sum?

[*b* 99] Answer. I think not.

Question. Did Mr. Randel say whether the five or six thousand dollars that he intended to assign to Mr. Brown was in part or in full payment, or did he say any thing about it?

Answer. I understood to be on part.

Question. Explain that expression—do you mean that you understood it was in part, or that you understood Mr. Randel to say that it was in part?

Answer. I understood Mr. Randel to say it was in part.

Question. Do you recollect who was present at the time of the conversation about the per centage that you referred to in your examinations before?

Answer. I don't recollect.

Question. Were there other persons present?

Answer. I believe there was somebody there, but I could not state who it was.

Question. Do you know a man by the name of Job W. Folwell?

Answer. I do.

Question. Was he present or not?

Answer. I could not say whether he was or not. If any body was present, I should suppose it was he, for we were there together at that time.

Cross examination declined by J. R. Ingersoll, Esq.

By Mr. Tyson.

In your first examination, was the evidence read to you, or were you in a hurry to go?

Answer. I recollect now my vessel was gone at the time; I sent her away that afternoon. I have no recollection whether it was read over to me or not.

Question. Were you or were you not detained longer than

[*b* 100] you wished?

Answer. Yes, sir.

By Mr. Tyson. Impatient to go?

Answer. I was; my vessel had gone at the time. I was to go in the two o'clock boat, but I was too late.

Question. Did you hurry for the purpose of going in the two o'clock boat?

Answer. I believe I did.

SAMUEL SUTTON.

Taken, sworn, and subscribed, this 8th day of November, A. D. 1837.

W. H. KEATING, *Examiner*.

Endorsed *b* 89 to *b* 101.

Deposition of Sarah L. Peters.

Examined by J. R. Tyson, esquire.

[*b* 101] Sarah L. Peters, a witness, residing in the city of Philadelphia, of competent age, adduced on the part of the respondent, being duly affirmed according to law, doth declare and say:

I lived for several years with Mrs. Brown, (Mr. Brown's mother,) until her death. Mr. Brown afterwards lived with me. I think she died in September, 1834. When I went to reside with her, Mr. Brown was engaged with Mr. Randel; he may have been before, but at any rate he was then. Mr. Randel came frequently to see him, but Mr. Brown was more at Mr. Randel's. He was there, at Mr. Randel's, for two or three weeks at a time. One time he went on to Washington; I don't know how long he was gone there. He was entirely engaged in Mr. Randel's business, against the advice of all his friends; but Mr. Brown took the advice of Mr. De Witt. Mr. De Witt thought Mr. Randel's cause was a good one, and that he would gain it, and Mr.
[*o. b. m.*] Brown was to be paid for his services. (Objected to by Mr. Ingersoll.) I heard Mr. Brown say so. Mr. Brown told me, and I have heard him repeat it to several people, that, if it had not been for Mr. De Witt, he never would have engaged for Mr. Randel. He was to be paid for his time and services while in the employ of Mr. Randel; and if Mr. Randel succeeded, he was to be very handsomely remunerated, but if not, he was to
[*b* 102] receive nothing, only except for the time that he was employed. I heard Mr. Brown say this in the year 1831 or '32. It was several years ago; I could not designate the year. I have not heard him say it since 1834. Since that, I have had no conversation with him on the subject.

I heard Mr. Randel one day, when I was speaking to him about Mr. Brown's being sick at Mrs. Randel's, say that they would take care of him; that they could not do without his services. He took great interest in Mr. Randel's service; walked his feet off almost in his service; went up to Mr. Gillespy's time after time. Mr. Gillespy was sick at the time. I heard Mr. Brown speak to Mr. Randel about it. I heard Mr. Brown give Mr. Randel his opinion, in my parlour, that he had better get Mr. Gillespy's opinion on the subject in writing, as his life was then considered in danger, relative to their business—this canal business.

Question by Mr. Tyson.—His deposition?

Answer. I suppose—it was to bring it up in the trial of the cause.

I have known Mr. Brown to attend to a great deal. I have myself been very much worried with Mr. Randel's debts. I suppose it must be a week or two after he lost one of his children that they came to our house to know if Mr. Brown would pay for the carriage hire; there were other debts, I know. Generally he was away

from home a week or two, but he has been a month; he went very frequently.

Question. Do you know whether he ever went to New Castle and returned the same day?

Answer. No; the Mr. De Witt I referred to, was my brother-in-law, Mr. Simeon De Witt, surveyor general in New York. Mr. Randel, I believe, served under him; he is Mr. Brown's
[*b* 103] uncle. I do not know of any payments made by Mr. Brown for Mr. Randel. I mentioned it to him; he said he would write to Mr. Randel or attend to it; whether he did or not, I do not know.

Cross examination declined by Mr. Ingersoll.

SARAH L. PETERS.

Taken, affirmed, and subscribed, this 12th day of March, 1838, before me,

W. H. KEATING,
Examiner.

[*b* 105] Deposition of John Albertson.

Examined by J. R. Tyson, esquire.

John Albertson, of Delaware city and State, a witness of competent age, being duly affirmed according to law, and being examined on behalf of the respondent, doth declare and say:

(A letter dated Delaware city, September 15, 1837, signed John Albertson, herewith filed, being shown to the declarant:) The name to that letter is in my handwriting. Mr. Brown was off and on at my house, boarding. I keep a tavern. Mr. Brown paid me for his board; he was doing Mr. Randel's business, with some other clerks; he was there; others were there; they were sheriffs, I suppose. Sutton was, Vining was there; Randel was the cause of their being there. Mr. Brown paid his bill; Sutton paid most of his; Mr. Randel paid me last September, latter part of the fall of 1836; he paid me the little remnant of board, one thing and another; the charges were against different men; he said he would pay.

Cross examined by Jos. R. Ingersoll, Esq.

(The deponent being shown a book with a receipt in it dated 29th September, 1834, and copied at the foot of this deposition, identifies it as his receipt to Mr. Randel.) That signature is my handwriting.

Question. When did you sign that?

Answer. I am wrong altogether; there is seven dollars and fifty cents and a little horse hire paid for by Mr. Brown; fifteen days' board at half dollar a day. September, 1834, it left me.

Don't you recollect of signing other receipts?

I don't recollect any except that this fall.

Do you know Capt. Sutton?

Yes, I know him.

Do you know his general character?

As to his general character, I would not confide in him as to most men.

What do people say of his general character for truth and veracity?

It is rather considered of him that he is a man not to be depended upon; that is the way most men say of him. I don't know anything of him myself; have had no law suits with him; there are flying stories, people merely talking about him being a man that would not say and do every thing that is right; but as for my own part, I know no wrong, no harm of him; he always seemed to me right.

Re-examined by J. R. Tyson, esquire.

I don't know his general character, only I have heard people say; I have heard Mr. Wilson speak of him; at that time there were many found fault with him, while he was sheriff there, in 1834 and 1835, I believe. I may be mistaken.

Question. Was it within the time of the squabble with Wilson?

Answer. Yes, he was there some time. I cannot say whether Mr. Brown paid me; the receipt left me altogether. He paid me for a horse and gig for a day; I don't know whether he had it more than a day or not. I don't recollect about the fifteen days' board, if Mr. Brown paid it; I don't think my books would show, that I could find his name on my books. That is my name on the letter, (of September, 1837, herewith filed.) Mr. Brown was there, from the first of his coming till he went away, a month or so; he went away for some days and came back again; one time he came and went away the same day. There was a Mr. Bean [*b* 106] there, and he appeared to be the main superintendent.

By Mr. Ingersoll.

The horse and gig that Mr. Brown paid for was of a Sunday; whether he had [them] any other time I cannot say; if he had not, why, the dollar he paid me was wrong. It was to go to Port Penn that he had it that Sunday. I don't know any thing about what it was for; I don't think it was for Mr. Randel's business; I think Samuel Sutton went with him.

By Mr. Tyson.

Can you say, positively or not, whether Mr. Brown paid you for the fifteen days' board.

No, sir, I cannot, the receipt left me so; I cannot say; I thought he generally paid me before he left the house. I remember Mr. Brown paid me, as I thought he generally did; the latter part of the time he was not there so steady. To my knowledge I have not received any money of Mr. Randel on account of Mr. Brown, and I should have said that before I saw that receipt.

JOHN ALBERTSON

Taken, affirmed, and subscribed, this 12th day of March, 1838, before me,

W. H. KEATING,
Examiner.

(5.)

DELAWARE CITY, *Sept.* 15, 1837.

WILLIAM LINN BROWN, *Philadelphia*.

As you wish, I have examined my books and find no charge against you, or John Randel, Jr., for you, as you always paid me for your board and expenses when you staid at my house here in the fall of 1834, when on J. Randel's business, which was for some weeks. I did not put it in the book, but on the slate, as I did charge who paid me at the time. Some others who were here at that time, and staid at my house on J. Randel's business, I have charged to J. Randel, as he was to pay for them, but has not paid me, though nearly three years ago.

Yours, respectfully,

JOHN ALBERTSON.

Copy of an account in John Randel, Jr.'s, receipt book, verified by John Albertson, as stated in his deposition.

John Randel Jr.,		To John Albertson, Dr.
25th Aug.	To 4 meals, self, wife and child -	$2 00
27th "	3 " - - -	1 50
29th "	1 " - - -	25
31st "	2 " - -	50
Sept. 6	2 " - - -	50
" 13	1 " - - -	31¼
" 19	1 " - - -	37½
" 21	1 " - - -	37½
" 24	To 6 days' board for boy (Peter) -	2 25
	To horse keeping - - -	1 00
		$9 06¼
Sept. 29	To dinner and horse - - -	75
		$9 81
	To extra privilege of house - -	5 00
	" Wm. L. Brown's board, 15 days -	7 50
	" " " horse and gig -	1 00
	" Wm. H. Vining's board - -	50
	" Benjamin A. Janvier's board, 6 days -	3 00
	" Alexander Clay, 2 weeks, assistant to sheriff, board - - -	4 00
		$30 81

Del. city, 29th Sept., 1834. Received of John Randel, Jr., the above $30 81, in full.

Signed, JOHN ALBERTSON.

The original marked "W. H. K.," by the examiner on the face of it.

A true copy. W. H. KEATING,
Examiner.

Deposition of James Gardner.

Examined by J. R. Tyson, Esq.

[*b* 108] James Gardner, of Christiana Hundred, in the State of Delaware, of competent age, a witness adduced on the part of the respondent, being duly sworn according to law, doth depose and say.

You were sheriff at one period?

Yes.

When did you act?

From November term 1833, to November term 1834.

Of what county, high sheriff?

Of New Castle county, high sheriff.

You were engaged in attaching tolls on the canal during that period?

Yes, sir, I had a writ of attachment in my hands for the use of Mr. Randel.

Did you know Captain Sutton?

Yes.

What had he to do on the canal?

He was appointed my deputy at the request of Mr. Randel. Captain Sutton and Mr. Folwell were appointed the first deputies, by me, on the canal.

By Mr. Ingersoll.

Written request of Mr. Randel?

I compelled him to make the request in writing to indemnify me, otherwise I would not have made the appointment, not being acquainted with him.

By Mr. Tyson.

You have not the paper with you?

No, sir. It was written by Mr. Read my attorney; the two persons being strangers to me.

How did they discharge their duties?

Very well, both of them. No fault to find with them.

What is the character of Captain Sutton for truth and veracity?

Very good, so far as I know. I never knew him till I ap-
[*b* 109] pointed him to be deputy on the canal.

Were you seldom or often in his company?

Very often. I went down to the Delaware city every day or two, where he was doing business for me.

How frequently did you come into contact with him during the time you were attaching?

I suppose a hundred times.

Then you saw him every day?

No, sir, not every day, at least three times a week, and sometimes oftener. There might have been times when Captain Sutton was absent visiting his family, or on business for Mr. Randel; in that case, he may have been absent for a week or two at a time.

Did the business in which you were engaged in serving attachments bring you frequently together, or otherwise?

At least three times a week I went down; sometimes four or five times a week. I saw Captain Sutton generally when I went down, as he seemed to be better acquainted with the names of the captains and of the vessels than any other deputy that I had.

Was Mr. Randel pleased or displeased with the discharge of his duties and demeanor?

He seemed satisfied so far as I observed.

Did you see them together?

Oh, yes.

Did the duties in which Captain Sutton was engaged there require a correct man?

I should say it did; had he not been a man to be depended on, he must have been removed at once.

Did you ever know him to make a false return of cargoes?

No, sir, I never did.

What are his habits; is he a temperate or intemperate
[*b* 110] man?

I considered him a temperate man. I think I never saw him intoxicated; I am sure that to the best of my recollection I never did.

Was Mr. Brown, during the period you refer to, on the canal?

Yes, sir.

What was he doing?

He seemed to be doing business with Mr. Randel.

Did you ever see them together?

Very often.

What was he doing, during the absence of Mr. Randel, on the canal?

He seemed to be doing Mr. Randel's business when he was absent.

In what sphere or department did he act? What seemed to be the sphere of his duties?

He seemed to be the second edition of Mr. Randel, I thought.

Did he act as clerk, counsel, or general agent?

Indeed I cannot say what he was doing; he seemed to be doing the same kind of business that Mr. Randel was doing.

In relation to attaching tolls, what did he do?

Mr. Brown could do nothing of that kind; he was not appointed for that, he seemed to be the in-door and out-door advocate of Mr.

Randel. It required in-door and out-door work, much of that, on board of vessels, &c.; there was a great many opposed to the process—the attachment. They were doing business with the people of the canal. I never blamed them for what they did.

How was the opposition you speak of manifested?

Pretty violently sometimes.

In what form do you mean?

I think once they threw Mr. Sutton, process and all, into the canal. (The witness desires to correct a mistake. "Capt. [*b* 111] Sutton was not thrown into the canal; there was an affray; the writs were thrown in the canal, not the captain. I was not present—that was my understanding." (Correction made after the deposition was closed.) And at another time, they resisted all my deputies and myself. I do not know if they were all there at the time, but I recollect two of my sons and Mr. Vining were there. I do not know if Captain Sutton was there—the others I recollect. I took three of them up, and put them in prison in New Castle. I do not recollect if Mr. Randel was there; he may have been there though, at the time.

Was Mr. Brown's situation there pleasant?

I should suppose his situation and Mr. Randel's must have been somewhat unpleasant; however, I do not know. On this occasion they struck both my sons—they were deputies. It was not the captains that struck him. We were taking a captain—he resisted, and they attempted to rescue him. One was a blacksmith, I believe, and the other I think was a captain of some kind of a boat on the canal. I think they were taking the captain of the boat on the canal to the steamboat, and he was advising them to resist.

Was violence offered to Mr. Randel or Mr. Brown?

No, never to my knowledge. They spoke very disrespectfully of them, but I never knew of any violence offered to them.

How was it on the canal in regard to health?

I think it was very unhealthy. I never staid there at night myself, but I had one, indeed, two sons there; one took sick, and I was very uneasy about him. Dr. Black attended him. I took good care never to stay over there myself at night.

Was Mr. Brown inattentive, or otherwise, in regard to [*b* 112] Mr. Randel's business?

He seemed to be very active, I thought.

Was it necessary or not to stay up at night?

It was essential to stay up at night all night.

How about Sundays?

Mr. Randel can tell you better about that. I declined issuing process on Sundays.

Do you know whether process was served upon Sunday?

I think not.

Do you know whether Thomas Janvier is a temperate [*o. b. m.*] or intemperate man?

He is an intemperate man.

Cross examined by J. R. Ingersoll, Esq.

What did Mr. Randel do there? Did he do any thing more than making oath?

Indeed, I do not know; he seemed to be very active, as well as Mr. Brown. They seemed to be continually writing. My business was altogether different of theirs.

Was it Wilson who helped Sutton in the canal at the time you speak of?

I think so; they had a fight.

Do you know any thing of Sutton's character as to truth?

It is good, so far as I know.

Of truth and veracity?

Good, as far as I know. They spoke hardly of Mr. Randel, Mr. Brown, and others. They seemed to blame Captain Sutton more than the rest, because he knew their names. Without him they could not have known them. I meant to say, when I said they disliked Sutton more than the rest, the captains were more dissatisfied with him; they blamed him for giving their names, and the names of their vessels.

Whom did you ever hear speak of Sutton as a man of

[*b* 113] truth?

I never heard any one speak to the contrary.

The same question repeated, and same answer.

The question again repeated.

It is a very extraordinary question, and I shall answer it in no other way.

Mr. Ingersoll declines further cross examination on account of the witness declining to answer the question.

Re-examined by Mr. Tyson.

You have spoken of Sutton's estimate with the captains.

How did he stand with the company?

Oh, they were very much dissatisfied with all of them.

JAMES GARDNER.

Taken, sworn, and subscribed, this 13th day of March, 1838.

Before me, W. H. KEATING,
Examiner.

The examiner thinks it due to himself to state, that he stated to the witness, that it was his duty to answer the questions put to him.

W. H. K.

[*b* 114] *Deposition of James S. Gardiner.*

James S. Gardiner, of the city of Wilmington, in the State of Delaware, a witness, of competent age, adduced on the part of the respondent, being duly sworn according to law, doth depose and say:

Were you engaged on the canal? Mention what you did, and when.

I do not rightly know what time I went on the canal. I went at the time my father did, in the year, 1833, at the time my father was appointed sheriff. (The witness corrects the testimony as follows: "I went over to New Castle with my father when he was appointed sheriff. I went with Mr. Randel to the canal on a Monday, but I do not recollect what month or what date") I went over with him.

What did you do on the canal?

The first I did on the canal, there was an attachment put into my hands. I went down with Mr. Randel to the canal the first one.

In what capacity did you act?

Deputy sheriff.

By whom appointed?

My father.

Do you know Captain Sutton?

Yes, sir.

What is his character for truth and veracity?

Well, I believe he is a man that we put confidence in him.

Did you ever hear any thing against him?

There were captains. No, sir, I believe not.

[δ 115] What are his habits?

He appeared to be a man that took good deal of care of himself.

What do you mean?

By not exposing himself in drinking, or so.

Did you ever see him intoxicated?

No, sir, I believe not.

How often were you in the habit of meeting him?

I see him nearly every day while he was engaged in that business.

For how long a time?

I really cannot say what length of time, but much longer than I wished.

Was Mr. Brown there?

Yes, sir, not on the canal using any kind of process, as I know of; he might have been doing it while I was away.

What do you mean?

Serving, taking captains, or attaching captains, that is, while I was there.

What did he do?

I can recollect of one time of Mr. Brown's being in the sitting room in one of the landlord's houses when I came in from the canal; I inquired of him if he had a writ for such a man's name, and I believe he handed me the writ, and I went out and took the captain.

In whose handwriting were the writs generally made out?

I cannot say in whose.

I want you to state what seemed to be his duties; whether he had a particular department or otherwise.

As to whether he was employed by Mr. Randel or no, I do not know; but he appeared to me, to be trying to assist Mr. Randel in that canal business.

Did you stay there during the night?

Yes, sir, I have been there during the night, three nights [*b* 116] in succession. Never took my clothes off.

Was any one else besides yourself up at night?

Yes.

Who?

Captain Sutton, and Mr. Folwell, and my brother.

Who besides?

Well, I do not recollect any more, there might have been some more, some nights, but I do not recollect at present.

Whom did you get your writs from at night?

At that time we got our writs from the prothonotary office. I believe Mr. Janvier brought writs down, or issued them there, brought them down.

How many nights were you there altogether?

It is hard to tell, I do not recollect how many nights. I was there the first three nights by myself alone.

Did you stay there more than three nights?

Yes, sir, I was down there every day, more or less, fetching up the captains in a gig. A horse and gig, bringing them up to prison.

How was it on the canal, healthy or sickly?

Well, sir, I believe I never was sick there. I felt bad, but I never took sick there myself. Was well. All said it was sickly.

Do you know whether any body got sick?

Yes, sir.

Was Mr. Brown sick?

I do not recollect that he was sick. It strikes me that I heard him complain, either at Delaware city or New Castle, but I cannot say that he ever was sick on the canal.

Who was to pay you for your services on the canal?

There was no agreement for pay. I lived with my [*b* 117] father at the time, he generally gave me as much as I wanted, and that was all I required. Mr. Randel, I think, paid the expenses of horse hire of some down there, perhaps all. I think I have hired myself horses.

What is Captain Sutton's disposition, good or bad?

Towards me his disposition seemed good. I never saw him tried. I never saw him made very angry in my presence.

Would you call him, from what you saw, of a quarrelsome disposition?

No, sir, I would not.

Did you ever know him to make a false return of his cargo?

No, sir, I have not.

Do you know Mr. Wilson?

Yes, sir.

Is Mr. Wilson a man of amiable temper?

Very quick temper, but his temper is easily taken down again.

Were you present when the affray took place between Sutton and Wilson?

No, sir, I was not; I wish I had.

I want you to say whether Mr. Brown seemed to be attentive or inattentive there? active or inactive?

He seemed to be very active, the time that he handed me the writ was the only time that I knew him to be engaged for Mr. Randel. What he did before that, or after that, I do not know. He seemed to be assisting Mr. Randel.

State whether, when you arrested captains, or attached their property?

We attached them, not their property.

How did they behave?

Some behaved well, some very badly. One threatened to shoot me: loaded his gun with powder and shot, in the presence
[*b* 118] of twenty witnesses; he forbid me from coming on board of his vessel.

Cross examined by J. R. Ingersoll, Esq.

Can you fix the time when you were there?

No, sir, I cannot.

How long do you think?

Off and on, from the time it commenced, till it ended.

Did it take the whole season?

Pretty much the whole season.

What accommodations are there there? Is there a town?

Yes, a town.

How many persons or houses?

From forty to fifty houses at that time—perhaps not so many.

Was Mr. Randel employed there, except in making affidavits for the writs served on the captains? What else did he do? Was not that his business there?

I think it was.

Do you remember whether any assignment had been made to Mr. Brown, or do you not know it?

No, sir, I know nothing about that.

JAMES L. GARDNER.

Taken, sworn, and subscribed, this 13th day of March, 1838.
Before me, W. H. KEATING, *Examiner.*

Deposition of William Ridgway.

[*b* 117] *Examined by J. R. Tyson, Esq.*

William Ridgway, of the Northern Liberties of Philadelphia, lumber merchant, a witness of competent age, adduced on the part of the respondent, being duly affirmed, according to law, did depose as follows:

You know Capt. Sutton?

Yes, sir.

Was he in your employ?

He is now.

[How long has he been?

I think about eighteen months—not short of that, perhaps much longer. He is the captain of a vessel.

Did you make inquiries before you engaged him, as to his character and fitness?

I did.

What character did you obtain?

Well, we were satisfied to take him in our employ from what we heard. We thought he was a suitable person.

What has been your experience? How have you found him as to truth and veracity, or its opposite; and an honest or dishonest man?

We found him to be a man of truth and veracity, and an honest man.

Have you ever doubted of either?

No, I have not.

Are your transactions of such character as to enable you to judge of his correctness or incorrectness?

Well, I think so.

Just mention what his habits are? temperate or intemperate, lazy or industrious?

Well, I have never seen any thing like intemperance about him; he is about as industrious as most men.

Have you ever heard any thing against his character for truth or veracity?

I think not.

Would you believe him on his oath?

I would.—Objected to by Mr. Ingersoll.]

Cross examination declined by Mr. Ingersoll.

WM. RIDGWAY.

Taken, affirmed, and subscribed, this 16th day of March, A. D. 1838.

W. H. KEATING, *Examiner*.

Deposition of Robert A. Williamson.

Examined by J. R. Tyson, Esq.

[*b* 121] Robert A. Williamson, of the city of Philadelphia, tailor, a witness of competent age, adduced on the part of the respondent, being duly sworn according to law, did depose as follows:

State whether you are acquainted with Capt. Samuel Sutton?

I have been acquainted with Capt. Sutton for a number of years.

[What do you know of him for truth and veracity?—(Question withdrawn.)

What do you know, and have heard of Capt. Sutton?

He is a hardworking industrious man, and a man that I have no cause to doubt his veracity in the least—none in the world.

Can you speak as to his general character?

Yes, sir, I considered it good. All that I have heard of his character is, that he is a quick man—gets flurried sometimes—has some quarrels.

What is his general character for honesty or dishonesty?

I have always heard him represented as an honest man. I have never had any knowledge to the contrary.

What is his general character for falsehood or veracity?

I have no reason to doubt him at all. I have no reason to doubt his veracity.

Would you believe him on his oath?

I would.

Are you acquainted with Mr. Albright?

I know the gentleman.

[*b* 122] State whether you were of a party to Baltimore with Capt. Sutton and Mr. Albright.

I was there in a pleasure party with Captain Sutton and Mr. Albright. We went from here to Baltimore.

What did you hear in Baltimore of Capt. Sutton's character?

I never heard nothing of him there. He and Col. Albright quarrelled there. I never heard any thing.

What was the conduct of the captain during that trip?

Captain Sutton behaved as any other one would. I see nothing out of the way.

Was he acquainted in Baltimore?

I don't know as to his particular acquaintance there—he had been trading there for some time.

Did you hear any thing against him in Baltimore, or on the canal?

No, I never heard any one mention his name in Baltimore, as to honesty or dishonesty, or of the kind. Some person might have asked us "if Capt. Sutton was with us, or so."

What was the cause of their quarrel?

Being up in town—knocking about town—came down on board the vessel—Albright and Sutton, they quarrelled concerning a pair of shoes—one said they were well made, and the other said they were not; that was about the amount of the quarrel.

Was there any blow struck on either side, and by which of them?

There was an attempt to clinch; to the best of my knowledge, my brother separated them.

Who was in fault?

About the amount of the fault, I think, there was a little too much of the Baltimore fire water. I think there would have been none of it, if there had not been grog on board.

Did they make up afterwards?

No, sir, not till this day, that I know of.

Was either of them sorry for what had taken place?

Captain Sutton appeared very sorry for what had happened when we all left the vessel.

How did he show his sorrow?

[*b* 123] He went to crying, went down below, laid down.

Do you know whether they have spoken, or had intercourse together since?

No, sir, they have had no intercourse since; they have a personal enmity ever since. I have heard them both talk.

What have you heard Albright say of Sutton?

I could not recollect any particular conversation that has happened any time back. The other day Albright told me that Mr. Jones wanted him as an evidence (I think he stated it was a Mr. Jones) against Capt. Sutton, respecting whether he would believe him on his oath. He told me he could not say that he would not believe him upon his oath, and he did not wish to be an evidence—to stir up this thing between him and Sutton again. That was about the amount of the conversation between us lately.

Do you know Capt. Gilbert?

Yes, I know one of that name—Isaac Gilbert.

What is his general character? Do you know his general character?

I should consider it bad.

In what respect?

Well, sir, there is in the first place, I consider it bad on account of his going from Philadelphia, in a vessel of my brother's and mine, with a full cargo, and fetching back no returns—saying he had lost the money; and part was found with him afterwards, which proved he did not lose it.

Found where?

Found in David McAllester's store, where he had put it for safe keeping—for himself, you may mention too.

What are the circumstances of Capt. Sutton—the pecuniary?

Well, I don't know of Captain Sutton how he stands; I can't say how he is off—rich or poor; he is not a rich man, I

[*b* 124] suppose; I guess he works for all he gets.

Is he a lazy man?

No, sir.

Do you know any thing about his family—of how many it consists?

I think there is none but himself and his wife—he has no children—and some of his sister's children. He took them home because they were left destitute, I believe.

Have you ever had dealings with him?

Yes, sir.

Has he ever been indebted to you?

Yes, I have lent him money frequently, and he has been in debt for goods; always punctual in paying. The night I heard of this

suit—I lent him fifty-two dollars that night; he paid me the next day.

Are you on good terms with Capt. Sutton?

I am on good terms now with him. He and I were at outs about the Baltimore spree. I thought he ought to give way a little more to Albright, as he was a passenger.—Objected to by Mr. Ingersoll.]

Cross examined by Mr. Ingersoll.

Was Capt. Sutton drunk?

I should not say that Capt. Sutton was sober that day, or Albright neither.

P. A. WILLIAMSON.

Taken, sworn, and subscribed, this 16th day of March, A. D. 1838.

W. H. KEATING, *Examiner.*

[*b* 125] *Deposition of Jesse Williamson.*

Jesse Williamson, of the city of Philadelphia, master sail-maker, a witness of competent age, adduced on the part of the respondent, being duly sworn according to law, did depose as follows:

Examined by J. R. Tyson, Esq.

Are you acquainted with the general character of Capt. Sutton?

Yes, sir; I have known him for years. He sailed in my employ for several years.

[State what is his general character, his estimation, in the community, and what you know of him.

Is good, as far as I know—as I have heard, till this thing occurred. Objected to by Mr. Ingersoll.]

What is his general character for truth or falsehood?

Good.

For what?

For truth.

[What can you say, from your personal knowledge of him, of his character for truth?

He has dealt with me, paid punctually, complied with his contracts.

Do you know his reputation for honesty or dishonesty?

As far as I know, good for honesty, in the neighborhood where he lives.

How is he represented—as an honest man, or dishonest man?

An honest man.

Have you had dealings with him?

Yes, sir; he has been in my vessels—as master of vessels of mine; and has had hundreds of dollars of mine at his
[*b* 126] command.

How have you found him in his engagements?

He was always punctual and honest, as far as I know; always, with me.

Have you known him to make an incorrect return of a cargo?

No, not to me. He was too extravagant at one time—that is why I discharged him. He bought eggs at forty cents a dozen. I did not like it—I could not afford to eat them myself.

Were you one of the party to Baltimore?

Yes, sir.

Just state what the conduct of Captain Sutton was during that trip.

His conduct was good, as far as I see it, all the trip, except with Albright and him; they were a little excited one day, and quarrelled, and they have never made up since.

Can you say what his character was in Baltimore?

I do not know what it was, except that he introduced us to several people there. He seemed to be well acquainted. We were well treated by the people to whom he introduced us; they paid respect to him. That is all I know about it.

What did you hear against him there?

Nothing.

Are you acquainted with Isaac Gilbert?

Yes, sir; he sailed in my employ.

What is—do you know, Captain Gilbert's character?

I don't want to say any thing about him.

Do you know his character for truth and veracity?

I don't want to mention any thing about him, I said. I have no knowledge of him for a couple of years, except some little jobs I did for him, and them he paid me. I believe there is one yet he owes me—I could get it from him.

Would you believe Capt. Samuel Sutton upon his oath?

[*b* 127] Certainly, sir.

How long have you known him?

You may set it down for sixteen years, any how—fifteen to sixteen. More than that—twenty. I built a schooner for him twelve years ago. He was in my employ more than twelve years ago.

During that time, have you known him as a mere acquaintance, or intimately?

He has been, during that time, off and on in my employ more than half the time.

Have you had dealings?

Yes, sir.

Just mention whether he has ever been indebted to you, and paid you?

I have already mentioned it before. I gave him eight or nine hundred dollars to buy a cargo; trusted him to sell it, and then he would bring me the returns. He would bring or send it to me.

How did you find those returns?

I found them correct always but once, and then he took a man's note instead of bank notes; he could not do otherwise, I believe. I had given him orders: I told him to bring me cash, and he

brought me the note. He took the man's note for part; he was not to blame for it. I got it all afterwards.

Do you know any thing about his pecuniary circumstances, and his family?

He is a man that makes about enough to pay his debts and furnish his family, and at the end of the year make both ends meet. He has nothing to spare—has often to borrow; in a few days pays it punctually.

What his circumstances are, and what they have been?

He lives from hand to mouth; earns his living and spends it.

[*b* 128] Has he been a fortunate or unfortunate man?

Can't say—he runs a vessel on shares. Sometimes he makes plenty of money, and sometimes not. Sometimes he is short, and has to borrow.

Does he own a vessel?

Not to my knowledge.

Has he ever?

Yes, sir—two.

Just mention, if you know, what has become of both, or either of them.

He sold one to my brother; the other was seized somewhere in Delaware or Maryland, for some debt of him and his partners; debts of his.

Do you know any thing of his family—of whom it consists?

He has his wife and some of his sister's children, and, I believe, one of his wife's sisters.

Have you ever heard Mr. Randel speak of Captain Sutton?

He asked me some questions about him yesterday.

I mean, when he was in his employ?

Never—I have heard Captain Sutton speak of Mr. Randel, and he always spoke well of him.

I want to know whether you have ever heard Mr. Randel speak of Captain Sutton, when Captain Sutton was in Mr. Randel's employment?

No, never.—Objection renewed.]

Cross examined by J. R. Ingersoll, Esq.

Were you present to-day or yesterday, during some violent language used by Captain Sutton towards Mr. Randel?

Yes, sir.

Be good enough to state it.

The captain was angry when he came down stairs, and he told Mr. Randel, he called him a scoundrel, rascal, blackguard, and villain.

[*b* 129] Were there not a few *damned* before.

Yes—I cannot keep it all in my mind. He told Mr. Randel he was a poor man—his character was all he had. Something to that purpose.

Did you take him off?

I came in between; I believed it might be serious, and moved him off.

What did Mr. Randel say to him?

Mr. Randel did not say any thing to him disrespectful, that I know of. It was in the public bar-room of the ferry.

Whose ferry?

Charles Champion's.

By Mr. Tyson.

What did Mr. Randel say he would do to him?

He said he would have spit in his face if he had not gone away. He did not tell Sutton so; he told me afterwards.

JESSE WILLIAMSON.

Taken, sworn, and subscribed, this 16th day of March, A. D. 1838.

Before me, W. H. KEATING, *Examiner.*

[*b* 130] *Deposition of John F. Barr.*

John F. Barr, of the city of Philadelphia, black and white Smith, of competent age, a witness adduced on the part of the respondent, being duly sworn according to law, did depose as follows:

Examined by J. R. Tyson.

Are you acquainted with Captain Sutton?

Yes, sir, I am.

Do you know his character for truth and falsehood; honesty or dishonesty?

[I always know him to be honest and upright; and in regard to truth and falsehood, I always believed him to tell the truth.

How long have you known him yourself?

I think it is between four and five years.

Have you had dealings with him?

I had a little dealings with him three years ago.

Of what kind?

I did some blacksmiths' work for him.

Was he indebted to you?

Yes, sir.

Does he owe any thing to you?

No, sir—he paid me right away.

Would you believe him on his oath?

Yes, sir.—Objected to by Mr. Ingersoll.]

Do you know his character for truth or falsehood?

I believed him to tell the truth. I do not know whether I understood the question or not.

Do you know how his character stands with the people as to truth or falsehood?

It always stood good as far as I know. He is a neighbor
[*b* 131] of mine.

What have you heard against his character for truth?

Nothing at all.

Cross examination declined by Mr. Ingersoll.

JOHN F. BARTH.

Taken, sworn, and subscribed, this 16th day of March, A. D. 1838, before me,

WILL'M H. KEATING,
Examiner.

[*b* 137] *Deposition of Elijah Brown.*

Elijah Brown, of the city of Philadelphia, a witness of competent age, adduced on the part of the respondent, being duly affirmed according to law, did declare as follows:

Examined by J. R. Tyson, esquire.

You are acquainted with Mr. W. L. Brown, and are a relation of his?

I am, and am an uncle of his.

You are acquainted with Mr. Randel?

I am slightly acquainted with him, personally; have often heard him spoken of in connexion with the business which my nephew, Wm. L. Brown, was doing for him.

Can you state when your nephew went into the employment of John Randel, Jr.?

Not positively, being at that period for the most time absent from Philadelphia. I can say that I learned during my return to Philadelphia, from thirty-one or two, up to 1835 or 1836, say 1836, that he was much engaged with business for Mr. Randel, and often absent from the city, in Delaware, on that account. I could add on that point, that since the last of 1834, I could speak to my own knowledge of his having been absent in Delaware, engaged in the same way.

[I will ask you a question: What you understood in about 1831 or 1832, of the terms on which your nephew was engaged in the service of John Randel, and what was the general understanding of his friends?

At the period you mention, in 1831 or 1832, I understood that the general expectation and understanding of his friends was,
[*b* 133] that he was to be remunerated for his time and expenses; and that in case of Mr. Randel's final success, he was to
[*o. b. m.*] receive a handsome adequate compensation.

Did you hear at that time any amount named in the event of success, that he was to receive?

Not at that time.

Did you at any ?

I did, at a later period.

Just mention what ?

I can't say positively ; but I believe in 1833 or 1834, that Mr. Randel was to pay him as a contingent compensation, two and a half per cent. on the amount that he might recover. I have not said whom Mr. Randel's suit was against; it was the Chesapeake and Delaware Canal Company.

Did you know the amount which your nephew, Wm. L. Brown, received from time to time from the year 1831, from Mr. Randel, down to the present time ?

I recollect hearing that he had received money from Mr. Randel, some small amount, between thirty and one hundred dollars somewhere. I recollect hearing of payments, one, two, or three times, and in 1836, I became acquainted with a payment by Mr. Randel to Wm. L. Brown, in a note for three hundred dollars, at thirty days.

In regard to these sums, do you mean that they amounted together to between thirty and one hundred dollars, or that each did ?

[*o. b. m.*] I mean sums in amount between thirty and one hundred dollars, made once, twice, or three times.

Did you hear any thing in regard to expenses of Mr. Brown at that time.

Yes, sir, I heard that Mr. Brown was to receive at least his expenses, in addition to the contingent payment. I stated at first that it was not defined, but to be a handsome adequate compensation. Afterwards I heard it was specifically agreed to be

[*b* 134] two and a half per cent. on the amount.—Objected to by Mr. Ingersoll, both to the question and the introduction of testimony of that kind.]

What was the ability of Mr. Brown to live without the receipt of a larger sum than that you have mentioned from Mr. Randel during those years ?

He was desirous of depending on his own exertions, but he was not without other dependence.

From your knowledge of his means, was he capable of living without receiving a larger amount, or, in fact, any amount from Mr. Randel during those years ?

If there had been a deficiency he had a dependence, a resource, to which, if there had been a deficiency in his expectations from Mr. Randel, I may conclude he would have resorted, as he would in any other failure in his dependence for support.

I want to know whether he could or could not have lived independently of any pecuniary aid or payment from Jno. Randel ?

I don't think he could by his own exertions for his time.

I mean from his means ?

I think not; he could not have supported himself independent of his own earnings by his own exertions, but I say, at the same time, that he had a resource independent of his own exertions if it had become necessary to have recourse to them—that is, in friends.

[I want to know whether you have or have not heard
[*o. b. m.*] your nephew at that time, from 1831 to 1834, complain of not having received the amount of his expenses from Randel?

Yes, I have heard him complain of not having received the amount of his expenses.]

I will ask you whether the aid you speak of, the resource, was or was not resorted to by your nephew?

[*b* 135] I answer, it was, to some extent.

Was that aid or resource sufficient or not, without any payment from Mr. Randel, to enable your nephew to live and pay expenses incurred in travelling?

I answer, yes; and I am led to do so, knowing that he did pay his expenses and was not in debt.

Can you tell me whether these payments you refer to as having been made by Mr. Randel were payments, reimbursements for his expenses, or in part compensation for his services? Whether you have heard any thing on that subject?

[*o.b.m.*] I have heard that they were for expenses and for time——that is, to the best of my recollection.

Have you, or have you not, (whether derived from Mr. Brown or from any body else,) reason to believe that any more than these three payments were made?

No.

Do you know any thing about this note you have referred to? Whether paid at maturity?

It was not paid at maturity by Mr. Randel, and another note for two hundred and fifty dollars was given by Mr. Randel as a renewal; the last note at sixty days; Wm. L. Brown furnishing fifty dollars to take up the first note of three hundred dollars. Mr. Randel observing to me at the time of renewing said note, that he wished to make it sixty days, as he would then be perfectly prepared to pay it. Wm. L. Brown was then absent from the city, and I acted for him in regard to the note.

Had it been discounted?

It had been discounted.

Did Mr. Randel pay it at the expiration of sixty days?

Mr. Randel did not pay it when due, so far as I know.

What was the origin of the present note of three hundred dollars?

[*o.b.m.*] I understood it was a payment from Mr. Randel to Wm. L. Brown.

Cross-examined by Mr. Ingersoll.

[*b.* 136] Do you recollect expressing to Mr. Randel that belief that the note was a payment from Mr. Randel.

I have a recollection of having said to Mr. Randel, that I heard it was a payment made by him to Mr. Brown. I am not perfectly certain, but that is my impression. I have that impression, though it did not occur to me till you named it.

Do you remember his reply?

I remember Mr. Randel's saying to me in conversation, that he had lent this note, that it was a loan; but I do not know whether it was at the time I refer to, of Mr. Randel's question to me.

Re-examined by Mr. Tyson.

What did Mr. Randel then say, or did he say any thing, in regard to compensation to Mr. Brown?

Mr. Randel observed that Wm. L. Brown was a good friend of his; had been of much service to him; and that he would take care of him. Those were his words, as well as I can recollect.

When did this conversation take place?

It took place, I believe, at the time we spoke of the note; or it may have been at another meeting.

Can you fix the date?

I can fix the dates of the conversations from the 10th to the 15th of July, 1836.

When Mr. Randel spoke of his services, did he allege that he had paid him for his services?

No, sir; he used those words, or words to the same import as those that I have mentioned.

[Do you know from which of his friends, he derived the aid of which you speak? Objected to by Mr. C. Ingersoll.]

[*b.* 137.] His uncle James Brown of London.

[If you have any knowledge about an assignment of a part of a judgment to Mr. Brown, mention it. Objected to, unless derived from Mr. Randel, or from the witness's own personal knowledge or information.]

I learned from W. L. Brown that Mr. Randel had assigned to him on his judgment against the Chesapeake and Delaware Canal Company two thousand dollars, and that it was made that he might have something in case of sickness or death, while engaged in his service, for his family. I also understood from Mr. Brown, that afterwards Mr. Randel wished to obtain a loan of money of Mr. Camac, and that security was required to be given, and that he requested W. L. Brown to accept an order in favor of Mr. Camac, to the amount of this assignment. Assigning as his reason, that he did not wish his application for loans to be known to the canal company, lest they might put obstacles in the way of his success. And William Brown agreed to accept the order to oblige Mr. Randel.

[*o.b.m.*]

Was there any thing said? I mean was there any connexion between the assignment of the judgment, and the acceptance of the order?

No, sir. I said that it was after the assignment of the judg-
[*o.b.m.*] ment, that he requested W. L. Brown to accept the order on Mr. Camac. That is the way in which I understood, it at least.

You spoke of his accepting an order for the same amount assigned?

I supposed he did.

What do you mean by that?

I spoke of two thousand dollars, and that he accepted the order for two thousand dollars, as I understood it.

[*b.* 138] Do you mean to say that the assignment of the judgment for two thousand dollars, was to enable him to accept an order for two thousand dollars?

No. I do not mean that. I mean that sometime after the assignment on the judgment to W. L. Brown, Mr. Randel applied to him to accept this order. According to the best of my recollection, that is what I mean.

I want you to mention, if you know about them, the character of the services rendered by Mr. Brown. Whether he was indifferent to the interests of Mr. Randel, or otherwise?

I know that he manifested great zeal for the interests of Mr. Randel. As much so, it appeared to me, as he could do for a father, or brother, and reposed as much confidence in Mr. Randel, as he could in such relatives, as to the fulfilment of any promises he might make to him.

[Had you any conversation with Mr. Brown in regard to the character of his contract with Mr. Randel, and when? Objected to by Mr. C. Ingersoll.]

I had with respect to the time. I must say, that at an early period of his engagement with Mr. Randel, I heard the compensation he was to receive was———

Oh, yes, that you have mentioned. I want to know if
[*o.b.m.*] there was any thing else. Did he say if it was verbal or in writing?

Within the last half period of the time he was engaged for Mr. Randel sometime, I learned that he had no written engagement with Mr. Randel as to the compensation he was to receive, and expressed my surprize at it. He alleged that he had perfect confidence in Mr. Randel's fulfilling his engagement with him.

When did this conversation occur in regard to the assignment?

I think it must have been in the latter part of 1835, or the beginning of the next year. Most likely the latter part of 1835.

[*b.* 139] *Cross examination by Chas. Ingersoll, Esq.*

Have you been in company with Mr. W. L. Brown since the adjournment yesterday?

Yes, sir.

And in conversation with regard to this case?

Yes, sir.

And with regard to your testimony in it?

Yes, sir.

And with regard to that part of it in which the assignment and order are spoken of?

I think that was slightly alluded to?

Did not Mr. W. Brown refresh your recollection in relation to that, on matters that you could not at first recollect?

So far as the time when it was mentioned to me, that I might refresh my memory on that point.

Did not Mr. Brown state to you since the adjournment, these matters about which you have testified this afternoon?

No, sir.

I do not mean all of them, but that part which relates to the assignment and order?

I answer, only on that point where enquiry was made, to refresh my memory, which I mentioned before.

Was there not some hesitation as to your capacity to testify on those matters this afternoon, on which Mr. Brown desired your evidence?

None at all.

By Mr. Tyson

Did Mr. Brown apply to you, or you make application to him, in regard to the date of the assignment?

I applied to him.

E. BROWN.

Taken, affirmed, and subscribed, the first part on the 16th, and the conclusion on the 19th of March, 1838.

Before me, W. H. KEATING, *Examiner*.

[*b* 140] *Deposition of John M. Cathcart.*

John M. Cathcart, of the city of Philadelphia, a witness of competent age, adduced on the part of the respondent, being duly sworn according to law, did depose as follows:

Examined by J. R. Tyson, esquire.

I want to know what is your business?

I am an oak cooper, and an inspector of salt provisions for the port of Philadelphia, but I do not work at present at coopering, my trade.

Do you know the general character of Capt. Samuel Sutton for falsehood or truth?

[I have been acquainted with Capt. Sutton; was raised in the same neighborhood till I was sixteen years of age—somewhere in that neighborhood till I was an apprentice.

As to his character?

(Mr. T.) Yes, sir.

I never heard any thing spoke against his character as to veracity or honesty. Since we have arrived at the age of manhood, we have been intimate—lived in his neighborhood—for the last five years, I suppose, been intimate with him.—Objected to by C. Ingersoll, Esq.]

Are you acquainted with his general character for truth or falsehood?

I am—latterly, have been in the habit of associating with him—latterly, my business and his bring us frequently together, being engaged about the water, and passing up to our respective doors.

What do people say of him for truth and falsehood?

[I never heard any thing against his character—this is the first that I have heard against him—I never heard till this [*b* 141] time—for myself, I would take his word for any amount that I was worth, and I believe among the general circle of his acquaintance and mine, it would pass for the same.—Objected.]

Have you had dealings?

I have had dealings merely to borrow money—he from me, or I from him—he takes my word, as I take his.

[Have you known him to violate his promise?

No, sir.

Would you believe him upon his oath?

Oh yes, sir, I would.—Objected.]

Cross examined by C. Ingersoll, Esq.

Are you intimate with Mr. Sutton?

I am.

On terms of friendship?

On terms of friendship.

In the habit of dealing with him?

No dealing—trifling dealing. No business, can't say dealing—borrowing or lending—something that way.

Are you in his debt now?

I am.

Do you expect to borrow more money of him?

No, sir.

You expect that your loans and accommodations from him are to cease?

Oh, no! no, sir.

Do you expect to borrow money?

Oh, yes, sir—small sums in case I am not at home, or so.

Is there any intimacy between his family and yours.

No, sir, none, except between myself and him. None between my wife and Mrs. Sutton.

Have you ever heard Capt. Sutton's character the sub- [*b* 142] ject of conversation?

I have not heard so much about it as I have this afternoon.

The same question repeated.

Answer. No, sir. I may have heard something about this suit, but nothing as to his character. I have never heard Capt. Sutton's character the subject of conversation, except in this case.

Do you mean to day?

Yesterday, I think I heard something about it.

Then you never heard his character favorably spoken of?

I did not understand you when I spoke of his character—I meant with disrespect—I have heard his character spoken of favorably—I have myself.

Be good enough to name the persons you now refer to?

Name the persons that I have heard speak favorably of. I could name many: Williamson, Jesse Williamson, or Robert A. Williamson, Wm. T. Gorman, James Galloway, James R. Marks, Garrett Winters—I am not certain as to Garrett Winters.

Was his character in question when you heard those persons speak of him?

I do not just recollect. I may have heard he was a clever fellow, or something to that effect—can't recollect the expression. Henry R. Naglee, you may say.

Did I understand you to say his character was in question?

Yes, I have heard some of those men say, they would go any lengths to serve him. I suppose they meant some distance—would strain nerves to be of service to him.

JOHN M. CATHCART.

Taken, sworn, and subscribed, this 17th day of March, 1838.

Before me, W. H. KEATING,
Examiner.

[*b* 143] *Deposition of James Galloway.*

James Galloway, of the city of Philadelphia, a witness, of competent age, adduced on the part of the respondent, being duly sworn according to law, doth depose as follows:

Examined by J. R. Tyson, esquire.

State what you know of Isaac Gilbert, and of any conversation at which you were present?

I went up with Capt. Sutton on Wednesday evening. I stopped just this side of Front and Noble to talk with a friend. I started and went on, and found Sutton and Gilbert in conversation. Sutton asked him in my presence, if he knew any thing disrespectful to his character, he said he had been informed that he had been telling Mr. Randel some things about him. He said he knew nothing—that he had no conversation with Mr. Randel on the subject. That is all the conversation took place between the gentlemen.

Are you acquainted with the general character of Captain Sutton for truth and veracity?

[Yes, sir, I have been acquainted with him since 1825. I was an apprentice then, and Capt. Sutton was in the employ of Mr. Williamson, who was my master. I found him always to be pretty punctual in business. This last five years I have had considerable dealings with him, and he with me—bought rigging and materials for his vessel. I have always found him punctual in his dealings—that's all, sir.—Objected to by C. Ingersoll, Esq.]

You say you are acquainted with his general character?

Yes, sir, I have been acquainted with him, and kept his company a great deal for this last five years.

How do people speak of him?

Well, sir. I have always heard him well spoken of.

I mean, for falsehood or truth?

[*b* 144] I never heard any conversation disrespectful of his character.

What is his reputation among those who know him for falsehood or truth?

I never heard any thing said against him—in conversation, say he is a clever fellow, or something of this kind.

Have you ever heard his character for truth impeached?

No, sir, I was going to say, I have been in company when they would run him, or something of that kind, but merely out of joke.

Is his general character for truth and honesty good or bad?

Good, sir.

Would you believe him on his oath?

Certainly, sir.

Cross examined by Charles Ingersoll, esquire.

Did you ever hear other people say, they would not believe him on his oath?

No, sir.

Are you connected in business in any way with Mr. Sutton?

No, sir, only in dealings with him.

He is a customer of yours?

Yes, sir, he deals with me. I am a ship chandler—deal in old and new articles of ship chandlery.

Is he a large purchaser of you?

No, sir, not large.

Have you ever heard Mr. Sutton's character discussed?

No, sir, I never heard him spoke disrespectfully of.

I mean, have you heard it discussed?

No, sir, only when he has left company I was in; they would say he was a clever fellow, or something to that purpose.

[*b* 145] Are you often in his company?

Yes, sir.

He is a friend of yours?

Yes, sir.

Has been so for some years?

Yes, sir, I think for five years I have been keeping company with him.

Were you requested to go with Captain Sutton on that occasion?

No, sir, he asked me if I would go, and walk with him up town. I said, I would take a cup of tea, and then walk with him. He asked me in the afternoon, if I would go and see Mr. Randel with *me;* he told me his business, and I told him he had better not go. I saw him again after tea; then, sir, we went to Arch street ferry, and he inquired after Mr. Randel, and he was not in.

Did he express an intention to offer violence to Mr. Randel's person?

No, sir, not in my presence. He said something about him, and seemed to be very passionate—mad about something he had said of him.

Repeat what he said?

I do not recollect. He said he had been a friend of Mr. Randel's, or so and so, on the canal, and Mr. Randel had said, he would not believe him upon his oath.

Did he not menace both Mr. Randel and Mr. Gilbert?

I think he said, if Mr. Randel had not been an old man he would lick him, or pound him.

Did he not also menace the persons whom Mr. Randel had called as a witness?

No, sir, I heard of no conversation but about Mr. Randel, when with me.

Was it after his search of Mr. Randel that he went up in pursuit of Mr. Gilbert?

No, sir, he did not go in pursuit of Mr. Gilbert; he went on business, to pay some money.

Who gave Mr. Sutton the information that his character
[*b* 146] was attacked by Mr. Randel?

I don't know, indeed, sir.

Where did you meet Mr. Gilbert?

They were in Front, just this side of Noble.

Who were?

Gilbert and Sutton. I stopped to see a friend, went on, found them in conversation; I walked by, he called me back and said he had a few words he wanted to ask Mr. Gilbert.

Mr. Sutton's manner was angry?

No, sir, he was talking very friendly, mild, same as he was before; I walked by and he called me back.

Do you say Mr. Sutton's manner was friendly?

They were talking very friendly, took no notice of me as I walked by, called me back, and asked him these questions.

Was Mr. Sutton's manner friendly when he put these questions touching Mr. Randel's impeachment of his character?

Yes, sir, he said he wanted to ask him something, to explain it in my presence.

Then, I understood you, his question to Mr. Gilbert was, whether he had any thing to say against him.

Mr. Sutton asked Mr. Gilbert if he knew any thing disrespectful to his character. He said, no, sir. Capt. Sutton told him, then, that he had been informed that he had been telling Mr. Randel something about his character. He said no, he knew nothing, nor could not say any thing. That was all the conversation that took place in my presence.

Mr. Gilbert is a very small man?

Yes, sir, he is a small man, small sized man.

Of inferior strength and capacity to Captain Sutton?

No, sir, both small men.

But smaller capacity?

I don't know much of Mr. Gilbert; I have not seen much of him.

[*b* 147] You are not friendly towards him?

No, sir, not friendly.

How long have you been on unfriendly terms?

I have never been on friendly terms with him. And two or three years ago a circumstance occurred, and he sued me, and Mr. Williamson, and another young man that was with us. He said Mr. Williamson struck him, but Mr. Williamson was not in company at all at the time it happened.

He indicted you for an assault and battery?

Yes, sir, and when it came to court he ran away, he and the witness both.

He is a timid man?

No, sir, I don't think that, quite the contrary; he is pretty noisy and quarrelsome. He took a vessel out of Mr. Williamson's, and with fourteen or fifteen hundred dollars; he came back and brought nothing. He drank wine, at least it was so reported; I don't know.

Had you struck him?

No, sir, I took him away; I was not acquainted at all with the company that he was quarrelling with; the gentleman who was with me struck him after.

Some one struck him?

Oh yes, a man that was in company, a man he did not sue at all.

When you say he ran away, he did not appear in court to prosecute?

No, sir, because we brought too many witnesses, some eighteen or twenty, to prove that Mr. Williamson was not there; that he was afraid; he was before the grand jury, but I never saw him afterwards.

JAMES GALLOWAY.

Taken, sworn, and subscribed, this 17th day of March, A. D. 1838, before me,

W. H. KEATING,
Examiner.

[b 148] *Deposition of Isaiah Bell, Jr.*

Isaiah Bell, Jr., of the Northern Liberties of Philadelphia, a witness of competent age, flour merchant, adduced on the part of the respondent, being duly affirmed according to law, doth declare as follows:

Examined by J. R. Tyson, Esq.

[Are you acquainted with the general character of Capt. Samuel Sutton for truth or falsehood?

Well, as far as I have known him, (I have known him for about five or six years,) I believe him to bear an upright character; I have had some dealings with him; he has brought flour from New York for me, several hundred barrels; he has always acted fairly with me in all his dealings; I have myself sold him flour in small quantities. I have not a great deal more to say. I have not been a great deal in company with him; know nothing more.—Objected to by Mr. C. Ingersoll.]

Do you know the reputation he bears as to truth or falsehood, among the people with whom he associates?

Well, I have never heard any thing spoken disrespectful of him.

Did you ever know his credit to be assailed?

I never did.

Would you believe him on his oath?

I should.

[b 149] [From your knowledge of his character, would you call him an honest or a dishonest man?

I should call him an honest man.—Objected to.]

Cross examined by C. Ingersoll, Esq.

Your acquaintance with him seems to have been of a limited sort?

It has been of a limited character.

You associate but little with those who know him particularly?

Very little.

Your means of knowledge are from his carrying this freight, and a business acquaintance?

Yes, my knowledge commenced with his purchasing a barrel or two of flour from me, and being in company a few times occasionally.

Then he came to your store on business?

Sometimes he did, and whenever I had any freight I gave him the preference, believing him to be an honest man, a trusty man.

Your knowledge of his honesty is confined to knowledge of honesty as to property?

Transactions altogether.

Have you had an opportunity of ever hearing his general character discussed?

No, I never had, except as to saying that he was a clever man, in a general way.

By Mr. Tyson.

[You have heard persons speak of him?

I have heard persons say that he was a man deserving of being encouraged, worthy of encouragement in business.—Objected to by Mr. Ingersoll.]

Have you heard persons speak of him?

Nothing further.

Have you ever heard any thing said against his character for truth?

I have not.

ISAIAH BELL, Jr.

Taken, affirmed, and subscribed, this 17th day of March, A. D. 1838, before me,

W. H. KEATING, *Examiner.*

[*b* 150] *Deposition of Jacob Rocap.*

Jacob Rocap, of the city of Philadelphia, a wood merchant, a witness of competent age, adduced on the part of the respondent, being duly sworn according to law, did depose as follows:

Examined by J. R. Tyson, esquire.

[Are you acquainted with the general character of Captain Sutton, for truth or falsehood?

I have been acquainted with him for five or six years. Objected to by Mr. Ingersoll.]

Have you heard of his general character? heard people speak of Captain Sutton's truth or falsehood?

I have heard many persons speak of Captain Sutton, but never heard any thing against him; never heard any thing alleged against him disrespectful.

Have you ever heard his character for truth impeached?

I never did, sir.

What is his reputation as a man of truth or falsehood?

I should take him to be a *truthy* man, as far as I had any knowledge of him.

[What is his character for honesty or dishonesty?

I never heard any thing against him as to dishonesty. Objected to by Mr. C. Ingersoll.]

Have you known him familiarly, or as a common acquaintance?

I have never been in company with Captain Sutton, only at my place of business; he has frequently passed and repassed by my place of business. We have had some little dealings together; he has landed some wood with me—he has purchased some wood of me for the use of his family.

How did you acquire the knowledge you possess of his character?

Only in this way—I mention having some little business to-
[*b* 151] gether in regard to the wood business; when I first became acquainted with him he was in the wood business carrying wood.

In no other way, sir, did you?

Since that he has been in the coasting business, and has purchased some wood from me for his family, and for his vessel likewise. I have never been associated with him in the company with which he associates; as to that I know nothing about him, or keeping company with him.

[Have you or not heard him spoken of by others?

I have frequently heard him spoken of by others. Objected to by Mr. C. Ingersoll.]

Can you say what his reputation for truth is, from what you have heard?

[From what I have seen and heard, I believe he is a *truthy* man. I know nothing to the contrary. Objected by Mr. C. Ingersoll.]

[Would you believe him on his oath?

I should, as soon as any other man. Objected by Mr. C. Ingersoll.]

Any other man, how?

Any other man I know. I should as lief trust to his oath as any other man.

Cross examined by Ch. Ingersoll, esquire.

Your opinion of Mr. Sutton is founded, I understand you to say, on your own mere observation of him?

Pretty generally, sir. I have not much knowledge of him from any other persons.

Does it lie in your way to hear much about him?

I often hear his name mentioned—hear him spoken of by many; but what I know of him is chiefly of my own knowledge. I take him to be a pretty genteel man—a respectable kind of a man.

JACOB ROCAP.

Taken, sworn, and subscribed, this 17th day of March, 1838, before me,

W. H. KEATING,
Examiner.

[*b* 152] *Deposition of James Rogers, esquire.*

Examined by J. R. Tyson, Esq.

James Rogers, esquire, of the town of New Castle, in the State of Delaware, a witness of competent age, adduced on the part of the respondent, being duly sworn according to law, did depose as follows:

You are a member of the Delaware bar?

Yes, sir.

Attorney or counsellor?

Attorney and counsellor in the courts of common law, and solicitor in the chancery courts.

According to the laws of Delaware, must the one who makes affidavit, under your attachment laws, to hold a garnishee to bail, have an interest or not?

Our system, in respect to attachments, requires that, whenever you wish to take out the writ of attachment, either the plaintiff, or some one for him, must make the necessary oath which is prescribed by law; the other person (beside the plaintiff) need not be interested, it may be a clerk, or a merchant, or any other person who may have a knowledge of the fact. This answer refers to the process of attachment. When the attachment is served, is laid in the hands of a party who is served as garnishee; then the [*b* 153] law varies as regards the rule, respecting the oath to be made, in order to hold the garnishee to bail. If the garnishee lives out of the State, or if it is supposed that he will not attend, or will go out of the State, then it is necessary for the party to make oath, in order to hold the garnishee to bail. In this latter case, which I have just stated, which is a proceeding to compel the attendance of the garnishee, there the rule differs from the rule in regard to the oath to be taken in order to take out the process of attachment. In the case of the garnishee, to compel the attendance of the garnishee, the oath must be made by the party himself, or by some one else claiming an interest under the attachment.

Suppose, if a person who had no interest in it were to make the oath, would he be guilty of any offence according to the laws of Delaware?

In answer to this question, in order to compel the garnishee to give bail for his attendance, the law requires that he should take the oath; it must be the oath of the plaintiff, or the oath of a person claiming an interest in the attachment. If the oath were made by a person who was not the plaintiff, and if the oath were properly prepared for him, drawn according to the act of Assembly, it would be of course a case of perjury, if he had no interest in the attachment, because the law expressly requires that he shall have an interest, in order to hold the party to bail.

The witness is requested to refer to the section under consideration in the digest of Delaware laws, and he reads from "the laws of the State of Delaware, revised edition, Wilmington, 1829, at page 46, act of 1770, section 6th and 7th are particularly applicable."

(Witness.) This is the digested code of Delaware now [*b* 154] in force.

Could a trustee for the use of the plaintiff make such an oath, without committing perjury?

I should think he could not.

Are you acquainted with the handwriting of Thomas Janvier, Jr.?

I have seen his handwriting.

The witness is asked to identify the receipt, (a copy of which is annexed, marked A—the original receipt verified with the exam-

iner's initials,) and he is asked if the body of it is in the handwriting of Mr. Janvier?

I think it is. Mr. Janvier was a student in my office.

Were you counsel for Mr. Randel and his suit, against the Chesapeake and Delaware Canal Company?

I was one of his counsel.

From what period?

The first of my becoming counsel for John Randel, Jun., was from the time of his contract under the Chesapeake and Delaware Canal Company, declared to be annulled. He first appeared to me as a client upon the occasion to which I have referred, in order to retain me as counsel, not as to any suit which he was about to commence against the canal company, but as to his business generally, he having been a contractor; he was a contractor on that work, and my retainer was in relation to the business growing out of that contract; a number of suits were threatened by persons who acted as sub-contractors. There were various other matters connected with his business, which were not connected with his suit with the canal company, but which grew out of that matter; one part of the business which I was consulted upon, was in relation to a claim then held by the Bank of Smyrna, where the name
[*b* 155] of Sutton was as an endorser upon the paper of John Randel, Jun., as I understood from them. The case was of notes or drafts which had been discounted at the Bank of Smyrna, and which were endorsed by John Sutton. The question was, as to Sutton's responsibility for those engagements. My first immediate employment as counsel in the suits against the company, was when I was requested to attend in Philadelphia. At the instance of John Randel, Jun., I came to meet his counsel here, in whose hands the suits had been previously placed by him, and commenced by them here against the canal company, and one against B. Wright. I attended at the office of Mr. Cha's. Chauncey, in Philadelphia, on which occasion Mr. Chauncey, and Mr. Jos. R. Ingersoll, or Mr. C. J. Ingersoll, were present. One of the Mr. Ingersolls, I do not recollect which, was present on that occasion.

The object of that consultation was, as to the propriety of abandoning the suits here, and commencing them in the State of Delaware.

After this, Mr. Read, then the district attorney for our district, and myself, were employed as counsel in the suits—and suits were commenced against the canal company, and against Wright.

Did you continue to be his counsel?

I continued to be his counsel in those causes, until the termination of each of them.

Were the pleadings voluminous, or otherwise?

Very sir, very voluminous, especially in the cause against the canal company; perhaps more so, than in any other cause that has been tried in this country; more than in any that I have any knowledge of.

How long did the ultimate trial last?

Well, to my recollection, the hearing of the demurrers, and the trial before the petit jury, occupied nearly two months.

[*b* 156] Were your own services laborious, or otherwise?

They were very laborious, sir; the cause lasted several years. I was the counsel that opened the case to the jury, and I believe the opening lasted three days without any repetition.

Is Mr. Read, your associate, living?

No, sir, he is dead.

Have you been paid for those services?

I have not.

Can you say whether Mr. Read has been paid?

He has never been paid—he was not paid in his lifetime, and his administrator has never received anything; there are suits now pending to recover the amount of our claims under contracts with Mr. Randel.

Was it a certain, or contingent compensation?

It was contingent, except one stipulated sum, which was paid as a retainer.

It was dependant upon what?

It was dependant upon the verdict of the jury, the judgment of the court, and the amount recovered.

Per centage?

Yes, sir.

Cross examined by Mr. Ingersoll.

The law of attachment as you have stated, is it a written or unwritten law?

It is a written law.

(Mr. Ingersoll desired it to be noted, that he objects to all the testimony in relation to the law of attachments.)

Did you continue as counsel for Mr. Randel, during the time of that suit?

I did, during the whole time.

(The rest of the deposition objected to.)

[*b* 157] Do you remember, yourself, the circumstances of Mr. Brown's assignment of a part of the judgment?

I have no knowledge of the assignment on the record, except what I derive from Mr. Randel himself.

The circumstances were these: Mr. Randel, I have a recollection, called upon me, with, I think, the skeleton of an affidavit—the formal parts with a view to my properly drafting it, so as to enable the oath to be taken, or rather to have it drawn in conformity with the act of assembly, for the oath to be taken by Mr. Brown under the seventh section of the attachment law. I did, upon that occasion, as his counsel, make up according to my view, the form of the affidavit to be made by Mr. Brown, in order to hold garnishees to bail. I understood, of course, on that occasion, that John Randel,

Jun., either intended to make, or had made, an assignment of some certain sum, I know not the amount, to Mr. Brown. What it was, I know not, and I never saw the assignment on the record that I know of.

Do you remember Mr. Randel's asking in the alternative, whether Mr. Janvier would not answer the same purpose?

I have no recollection of that; I know Mr. Brown made affidavits according to the form which I, upon that occasion, drafted. Of course, I considered, that Mr. Brown was interested on the record from that statement, otherwise I should not have encouraged his making affidavits, unless he had been a *bona fide* creditor under that judgment.

Would you have required an interest on the whole amount of the judgment?

No, sir, the act of assembly requires that the affidavit should be made by some one having *some* interest in the attachment.

That agreement with you, was it in writing or verbal?

The contract entered into between the late district attorney, Mr. Read and myself, and Mr. Randel, was written by myself according to his own propositions, not signed; and the original retained by himself, (John Randel) copy made, written the last few months, which I have.

By Mr. Tyson.

Have you answered fully in relation to the written agreement between Mr. Randel, and Mr. Read, and yourself?

No, sir, I have answered Mr. Ingersoll's questions relating to it. *I* have nothing further to answer about it.

Does Mr. Randel consider the contract as binding, (which you allege upon him?)

Well, sir, I can scarcely say what he considers as binding. I can only say that he has said that there was a contract between Mr. Read, and myself, and him, which was in the handwriting of myself.

Has he complied with the contract?

He has not.

I will ask one question, (Mr. Ingersoll may object to it,) can you say what his defence in the suit is?

I cannot say—I have no knowledge.

JAMES ROGERS.

Taken, sworn, and subscribed, on the 19th day of March, A. D. 1838.

Before me, W. H. KEATING, *Examiner*.

(A.—*Annexed to J. Rogers' deposition.*)

Received of Wm. Linn Brown, by the hands of Thos. Janvier, jr., thirty dollars.

(Signed) J. F. CLEMENT.

PHILADELPHIA, *March* 11, 1833.

[*b* 159] Deposition of George Wilson.

George Wilson, of the city of Philadelphia, a witness of competent age, adduced on the part of the respondent, being duly affirmed according to law, did declare as follows:

Examined by J. R. Tyson, Esq.

Are you acquainted with the general character of Capt. Samuel Sutton, for truth or falsehood?

Well, Samuel Sutton has lived in a house of mine between two and three years, he don't live there now, but I knew him before, by sight, for several years. Knew him to be captain of a vessel.

What can you state in regard to his general character as to truth or falsehood?

Well, as to that, I myself would say that he was a man who would speak the truth. I have never seen any thing else. I have known him. I should take him to be quite an industrious honest man, myself.

Have you heard people speak of him?

Well, I don't know that I have.

Have you ever heard people speak of him?

I have never heard people speak disrespectfully of him at any time. I don't know that I ever heard any body speak of his character. Don't think I ever did.

Does he owe you rent?

He don't; he paid me all my rent that he owed me—he owes me a small bill for hats.

Would you believe him upon his oath?

[*b* 160] Certainly I would, sir; I never heard any thing disrespectful of his character whatever.

Cross examination declined by Mr. Ingersoll.

GEORGE WILSON.

Taken, affirmed, and subscribed, this 19th day of March, A. D. 1838.

Before me, W. H. KEATING, *Examiner.*

(*Endorsed b* 101 *to b* 161.)

Deposition of Sarah Massey.

[*b* 29] *Examined by J. R. Ingersoll, esquire.*

Sarah Massey, of the city of Wilmington, in the State of Delaware, of competent age, a witness adduced on the part of the complainant, being duly affirmed according to law, declareth and saith:

I am the mother-in-law of John Randel, jr., the complainant. I am acquainted with Mr. Brown. I have often seen him at Mr. Randel's house. I resided there. I saw Mrs. Randel frequently pay money to Mr. Brown. I have heard Mr. Brown say, on receiving it, that he wished he could let it lay until the law suit was ended, when

he could get it all at once; and I have observed to him, why don't you let it lay? Because, he said, I am obliged to take it up to live upon.

I cannot say I heard the application made. I saw Mr. Brown receive the money. I saw him put it into his pocket. It was for services done—for writing. I heard Mrs. Randel say so, that she was going to pay him. I saw Mr. Brown write there. I heard him ask for the money. He said he had to take up his money for house-keeping—he would rather let it lay. Mr. Brown would be writing there—he would be getting ready to go—he would ask Mrs. Randel for some money. Mr. Brown made those observations. [*b* 30]

I recollect he asked Mrs. Randel if she could let him have his money. I saw Mrs. Randel give Mr. Brown, at one time, five dollars, another time ten dollars. Good many times I have seen it. I know the amount because I gave it to Mrs. Randel myself. I saw her pay it to him. I have seen Mr. Brown receive money frequently from Mrs. Randel. I could not specify the sums now. I saw her pay money, the same as to the other clerks.

They were writing at the same time that he was. They might not be paid at the same time. She paid them as they wanted the money. He would rather let his money lay, that it might be a larger amount that he should receive—that it might be of some benefit to him. Mr. Brown told me so himself. I do not recollect that he gave this money any term, except that he asked for his money, as thus: "Mrs. Randel can't you give me some money?" I believe Mr. Brown never went away without having his wages paid him. I believe it was never kept back, because if Mrs. Randel had not the money in the house, she would come and ask me for it—say Mr. Brown was going away, and she wanted some money. Mr. Brown was in the house with us, and boarded with us, free of all expense. Never was charged any. Mr. Brown had the privilege of using Mr. Randel's carriage and horse, when he wanted to go to Wilmington, or where he pleased. Mr. Brown received money frequently, but I could not say how many times, from 1831, when he first came.

Sometimes he would be a week—sometimes longer, perhaps. I think I saw her put the money into his hands, and he put it in his pocket. I think I have seen him receive fifteen dollars at a time. I don't know that Mr. Brown ever said what wages he got. The gentlemen were paid alike for their services. Mr. Vining was there one time while Mr. Brown was there. I cannot remember who were there. There were so many there that I cannot say who were writing together. Mr. Richie, Mr. Brown, Mr. Vining, Mr. Benj. Janvier, were all writing at the same time. [*b* 31]

Cross examined by J. R. Tyson, esquire.

I live with Mr. Randel now; I have lived with him since last November. I lived with him much of the time, Mr. Brown was

there. I accompanied Mr. Randel in the cars to-day. I did not converse with him to-day, as we came up, on this subject, nor lately. I don't know that any thing has been said by Mr. Randel to me in relation to this controversy with Mr. Brown; nor with Mrs. Randel, except that Mrs. Randel asked me, if I could say any thing before those gentlemen, to speak the truth; and I would not say any thing but the truth. I spoke of Mr. Brown as the clerk; he did nothing else but writing for Mr. Randel—his business was only that of an ordinary clerk. There were other clerks; they had not the use of Mr. Randel's carriage. I cannot recollect whether Mr. Brown ever paid any debts for Mr. Randel; I do not know any thing about it.

I do not recollect. The money paid by Mrs. Randel to Mr. Brown was for his services. I know it, because I lent the money; that is the reason I assign for knowing it was for his services; there was no other circumstance to pay it for. Mr. Randel paid Mr. Brown's expenses at the taverns or hotels, when he did not stay at our house. I know that he paid him. These moneys were paid after Mr. Brown had been writing. Commenced, I think, in 1831. I think it commenced at that time. I saw Mrs. Randel pay Mr. Brown fifteen dollars at a time; I cannot say how many times—frequently. I could say as much as five times. I could not say how many were five dollar payments; once, I think, was fifteen dollars—the others I could not designate. They were not all, I suppose, in 1831. Since that—later than in 1832.

[*b* 32] I first saw Mr. Brown, I think, in 1831. He never attended to any business for me. It could not be called business. There was a lot that was in dispute in Southwark. In talking about it, Mr. Brown said he could get it for me, but he never got it. It was a lot in dispute which I claimed. I spoke to Mr. Brown about it merely in a jest—nothing serious. It was in 1831 or 1832. We were talking about things. I never gave him any thing for it. I never employed him.

Mrs. Randel is in the habit of taking receipts when she pays money, but she did not take them from the young gentlemen when she paid them; she thought them honorable, and there was no use for them. She is very much in the habit of taking receipts. She never took any from the clerks, that I know of.

I do not always live with Mr. Randel, but do at the present time. I have for several years past been the greater part of my time with him—for the last four or five years. I have not lived the four-fifths of my time, for a few years past, with my other daughters. Since 1831, the greater part of my time I have been with Mr. Randel. While Mr. Randel was in Georgia, I lived with my other daughters; that was five months. I have never known Mr. Randel to consult Mr. Brown on any other business than as a clerk.

SARAH MASSEY.

Taken, affirmed, and subscribed, this 12th day of March, 1838.
Before me, W. H. KEATING,
Examiner.

[*b* 33] *Deposition of Thomas Janvier, jr., Esq.*

Thomas Janvier, jr., Esq., of New Castle, in the State of Delaware, being re-examined, says (being shown two receipts):

Towards the latter part of the trial of Randel vs. Chesapeake and Delaware Canal Company, in New Castle, Mr. Brown came to me, I think, after the jury had gone up, and told me that Mr. Randel had sent him to get from me receipts for services rendered as commissioner, in order that the costs might be taxed by the court. The rule in Delaware is, that the court shall tax the costs. I told Mr. Brown that I hardly knew how to make out the receipts; whether to charge the amount I had actually received from Mr. Randel, or the whole amount which I would have charged him, had I charged according to the rate of fees. He advised me to make them out according to the full charge; and I, thinking that the canal company were not entitled to the benefit of any arrangement between Mr. Randel and myself, told him I would do so. I, however, neglected to do it for a day or two—perhaps a day; it may have been the next day—I am not perfectly certain.

When Mr. Brown again called upon me, I think in the back room of Mr. Randel's house—the back parlor—when the same conversation occurred in substance as occurred at first, and I accordingly made out the receipts according to the full rate of charging, although the amount stated in my examination in chief is, according to the best of my recollection and belief, the only sums I ever had of Mr. Randel for any services of the kind. I gave the receipts to Mr. Brown; he stated he was going to take them up to the court—it was in the afternoon, and they were in session. I recollect the fact as distinctly as I exist. I received no money from Mr. Brown.

Not at all, sir—not at all.

[*b* 34] They were intended as a rule to regulate the court in taxing the costs; and as to any intention or expectation I had of receiving that amount, in case Mr. Randel succeeded, I refer you to my examination in chief.

I feel very confident, however, that there was a third receipt. I think so. If all the receipts were there, the amount credited would correspond with the amount I acknowledge in my examination in chief to have received. Two hundred and fifty dollars is the whole amount, I think, I received, as near as I can recollect. I may have received ten or twenty dollars more.

My strong impression is, that there were three receipts; my full conviction is so, and for this reason—that I executed three commissions: one in Georgetown, one in New York, and one in Philadelphia. (The two receipts now exhibited are dated November 22d, 1831, and November 20, 1833; and are the same already identified

before the examiner.) But they were, in point of fact, given the same day to Mr. Brown. At the time they were given, my clerk was in the room. I was dictating the report of the case to him, and I think one or two other clerks were in the room also; and that there was on my part, in giving them, no intention of secrecy. If I had thought of them at the time of my examination in chief, I would have given of them the history which I now give. The sums which I actually received were either from Mr. Randel or Mrs. Randel, but never from Mr. Brown; not a farthing did I receive from him on account of these transactions—they were paid to me from Mr. Randel, without the intervention of Mr. Brown. I did not know Mr. Brown in any way as connected with the transaction of the receipt of the money. I never saw the receipts since; I never heard of them since, until recently some one, I think Mr. Randel, mentioned to me that receipts were produced here. My expectations had always remained in my mind, of a pay-
[*b* 35] ment in full, in case of a successful issue, although I never intended to ask for it.

Mr. Tyson, for the defendant, declines cross examination, protesting against the whole deposition as illegal.

Mr. Ingersoll desiring it to be noted that the protest was not made till after the examination was closed.

THO'S JANVIER, Jr.

Taken and subscribed this 12th of March, 1838, before
W. H. KEATING,
Examiner.

[*b* 36] *Deposition of John Wilson.*

John Wilson, of the city of Philadelphia, a witness of competent age, adduced on the part of the complainant, being duly sworn according to law, did depose and say:

I know Samuel Sutton. I know a person of that name that was a captain passing through the Chesapeake and Delaware canal, that was afterwards employed by Mr. Randel as a deputy sheriff. I have not seen him lately; at the time he was serving process I knew him well. I was employed *as a* [by the] canal company as a collector of tolls. I have not seen him since the settlement between the company and Mr. Randel took place, that I recollect. I am acquainted with his general character. His general character for truth and veracity was not very good during the time I knew him. I am not on bad terms with Captain Sutton—I believe not at all. I once had a quarrel with him in Delaware—the court of Delaware settled that affair; since which we have had no difficulty. When we pass in the street we exchange the time of day. I have no enmity against him.

Cross examined by Mr. Tyson.

I refer to the time; when he first passed through the canal as a captain to the time that he closed his services for Mr. Randel, is

the period I allude to—a period of about three years. There were several circumstances that occurred that brought him under our notice; such as making false returns of his cargoes—which some other captains also did; but this, and other circumstances, called
[*b* 37] our attention specially to him. He also, on the landing, spoke very loud in derogation of the character of the president, and directors, and superintendent of the canal company, that gave me a bad opinion of him. I was not acquainted with Mr. Randel—Mr. Randel treated me very respectfully. I never heard Mr. Randel speak badly of the company in public. I had a conversation with Mr. Randel one day on the subject of his appointing Samuel Sutton as his deputy sheriff. I told him I thought he could have found many men about the State of Delaware that would have answered his purpose much better. I never heard Mr. Randel make use of any language derogatory to the company; he seemed very anxious to get what he claimed as justly due, but I could not have much conversation with him, being myself an officer of the company. This is the second time (to-day) that I have seen Mr. Randel since I left the canal company's employment, which was in October, 1836. I never had any business with Mr. Randel. I had a trial in court, for an alleged assault and battery committed by me on the person of Captain Sutton; I was charged with striking him. I was the collector of tolls on the Delaware lock, from the month of May, 1830, to October, 1836; I think 1831, (not 1830.)

I do not know if Captain Sutton is a temperate man. I never was much in his company; I have seen him inebriated.

JOHN WILSON.

Taken, sworn, and subscribed, this 12th of March, A. D. 1838, before me,

W. H. KEATING,
Examiner.

[*b* 38] *Deposition of Howard Ogle, esquire.*

Howard Ogle, of Delaware city, in the State of Delaware, esq., a witness of competent age, adduced on the part of the complainant, being duly sworn according to law, did depose as follows:

Examined by J. R. Ingersoll, esquire.

You were called upon, on behalf of Mr. Randel, at one time for the purpose of administering oaths; can you tell at what time?

I was so called; I cannot tell the time without examining my memorandum. (A receipt being exhibited, dated 29 Sept., 1834, is identified by the witness as the time.)

For what purpose?

To administer oaths to him and to Mr. Brown, to attach tolls on the canal.

How long were you engaged in that service?

Thirty-three days at that time.

In succession?
Yes, sir.
At the time mentioned in this receipt?
Yes, sir, in 1834.
Was this receipt dated at the time at the expiration of the thirty-three days?
Yes.
This is the receipt that was given by you, and you were paid that amount?
Yes, sir.
The receipt is in Mr. Randel's receipt book, is marked on the face "W. H. K.," and is as follows:

"John Randel, jr. To Howard Ogle, Dr.

[*b* 39] "To 33 days' service as justice of the peace, taking affidavits for holding captains of vessels to bail as garnishees of the Chesapeake and Delaware Canal Company, at $3 - $99 00
" To 5 bushels of oats, at 30 cents - - - 1 50
" To 4 weeks' pasture for horses - - - - 2 00

$102 50

" Delaware city, 29th September, 1834, received of Jno. Randel, jr., the above $102 50 *dollars* in full.
(Signed) "HOWARD OGLE."

Did you stop attaching them for that year?
Yes.
Were you alone employed in that duty of administering oaths for these purposes?
Yes.
No other justice of the peace?
No other.
Were you called upon again in 1835?
Yes.
Look at this receipt, and say whether you received that amount, and whether that was the time?
Yes. (The witness here verifies a receipt dated November 18th, 1835, marked on the face of it by the examiner "W. H. K.," and which is in the following words:)

November 18th, 1835.

Mr. Jno. Randel, jr.

To Howard Ogle, Dr.

October 30 To going to New Castle - - - $1 00
" 31 To one day - - - - 1 50
Novem'r 1 " going to Chesapeake - - - 1 50
" 2 " waiting at Delaware city, by your order 1 50
" 5 " half a day - - - - 1 50

	(Brought forward)		$7 00
Novemb'r	6	To one day	3 00
[*b* 40]	7	" one day	3 00
	9	" one day	3 00
	10	" one day	3 00
	11	" one day	3 00
	12	" one day	3 00
	13	" one day	3 00
	14	" one day	3 00
	15	" going to Chesapeake	1 50
	16	" one day	3 00
	17	" one day	3 00
	18	" one day	3 00
			$41 50

November 19th, 1835, received of John Randel, jr., the within in full. (Signed)

HOWARD OGLE.

Oaths also were administered to the deputy sheriffs at that time?

At that time.

Not in the year 1834?

No, not in 1834.

During those periods of 1834 or 1835, was Mr. Brown there?

He was in 1834, not all the time that I was there though.

Which part of the time was he not there, the first or the last?

Some of the first part, and some of the last.

Did you lodge any part of the time in the same house with Mr. Randel and Mr. Brown?

Yes, sir.

What house was that?

At both houses—Folwell and Albertson's.

What was the reason of your going to reside at the tavern, [*b* 41] you residing in the vicinity?

Because it was thought desirable we should be at hand at night. At first we stuck pretty close to it—for a week or two we stuck pretty tight to it.

During the time that Mr. Brown was there, what was the state of his health?

I took it to be the same while he was there as when he came; he looked then, I think, as he looks now. I took him to be a weakly man when he first came there.

What did Mr. Brown do; what was his occupation there?

Part of the time he swore in Mr. Randel's place.

Made the affidavits?

Yes, sir.

Any thing else?

Nothing else that I know of. He might have had other business, but I did not know it. He sometimes filled up writs that were printed.

Filled up blanks?

Yes, sir.

Had he any call out of the house about Mr. Randel's business?

Nothing that I know of, that I recollect of.

Did he transact any business there for Mr. Randel in 1835?

Not that I recollect; I don't recollect of his being there at all in 1835.

I will put the general question to you first, before you answer, merely in the affirmative or negative. Do you know Capt. Sutton's character?

No, sir. (The witness misunderstood the question; he says, he supposed he was asked whether he knew, himself, the captain's character.)

[*b* 42] Have you heard people speak of him?

Yes, sir.

His character for truth, is it good or bad?

It is not considered good by people there.

How long have you known him?

I had never seen him but once before, that I know of, before he came on Mr. Randel's business; I never saw [him] before but once, that I know of.

Had you any quarrel with him?

No, sir, none; Sutton and I never had any difference at any time.

Cross examined by Mr. Tyson.

How long have you known Mr. Brown?

The first I ever saw of Mr. Brown was when he came down with Mr. Randel to Delaware city in 1834.

What time in 1834?

I do not recollect the precise time; some time after we began to attach.

Had he been there when you came down, when you went on the canal?

He came after I went there.

Did your duties render it necessary for you to be on the canal?

No, I could be at home; I could see from my house in the day time when any vessel came; I lived directly on the canal, about three hundred yards from the lock; about that distance, I never measured it.

How long was Mr. Brown there during the year 1834?

That is a question I cannot answer; about three weeks perhaps, but I cannot say; perhaps more or less; I do not like to say, because I do not know.

How long were you there administering oaths?

I was thirty-three days there that time.

[*b* 43] Were you the first who administered oaths?

That question I cannot answer; I was the only person then that administered oaths while I was there, but I do not know who administered before, or whether any did administer oaths before me.

Who succeeded you?

No one.

Do you know whether Mr. Brown was up at nights during the time you were there?

They all set up late at night then; ten or eleven o'clock is considered general bed time there.

Then I understand you to say he went to bed at ten or eleven?

He might have gone to bed then, it was the regular bed time; he might have set up later though; I do not pretend to know.

You don't know of his rising from his bed on any occasion?

Yes, sir.

For what purpose?

He was called up; I was at home myself, they sent for me and I went down and called him up.

For what purpose?

To be qualified; there were two attachments issued, and he was called up to swear.

At what time was he then called up?

There was just light enough for us to see to write without candles.

About daylight?

Yes, sir.

Was that to make oath for himself, or for whom?

For the same concern that he was there, it was made for Mr. Randel.

Were the affidavits which he then made signed?

No, not by him.

How did that occur?

[*b* 44] That is more than I can tell; it was so dark I did not notice if he had signed them; I supposed he had; I signed my name.

Was he called up out of sleep?

I do not know whether he was asleep or not.

What did he say as a reason for not signing; did he complain of heaviness, sickness, or what?

I never heard any reason for it until lately; we were called off to New Castle *the next day*. [Corrected as follows: "The next day we received notice to be there the day after that at ten o'clock."]

Do you know whether he was indisposed at that time?

I don't know that he was; I never understood that he was indisposed till, a few days ago, Mr. Brown told me he was indisposed, and that was the reason he did not sign it.

How do you know that those affidavits were on account of Mr. Randel?

I do not know, because it was dark, whether they were for Mr. Randel, but I judged so, because all the others were, and I believed we had no other business there but of that kind.

Who told you they were all for Mr. Randel?

Why, my eyes; I suppose I could see for myself.

Did your eyes ever tell you that Wm. Linn Brown swore as a creditor?

If they did, I don't recollect.

Has Mr. Randel lately told you that they were all for him?

No, sir.

What was Mr. Brown doing there?

He was swearing, and getting the attachments issued.

Whether he filled the attachments?

Some of them he did.

What did he do besides?

He walked about, and done as the rest of us done.

[δ 45] You walked about?

Yes, sir; that was when we had nothing else to do.

Ever see him and Mr. Randel together?

Yes.

Ever hear their conversation?

No, sir; heard some of their conversation, but don't know what it was about. They talked through others.

Did he seem to be lazily or actively employed?

He did not seem to be very lazy. He seemed to do his part as well as any one that was there; except that case I mentioned, but he had'nt much to do.

He had not much to do?

Not much. I hadn't but little to do myself.

Did you ever know Mr. Randel to call on him to do something, or to consult?

No, sir. I have seen them conversing, but I don't know what it was about. When Mr. Randel came there, he and Mr. Randel always talked together, but I don't know what it was about.

Did you ever know him to go on board of the vessels on the canal?

Well, I don't recollect that I saw him, but it is very likely he did.

Was it sickly or healthy on the canal?

Healthy.

Peculiarly so?

Yes, sir; that is at Delaware city, I mean. I don't know what it was up the canal.

No sickness?

There was some trifling sickness, as there is every where, but it was as healthy as any part of the State of Delaware—considered so?

Was Captain Sutton popular with the canal company?

Not very.

Was he so with the captains of the vessels?

[*b* 46] With some he was, and some not.

Did you ever see him intoxicated?

No, sir, not that I know of. If he was, I did not know of it.

In what respect was his character not considered good there? I suppose you mean in Delaware city?

Yes, I mean in Delaware city, it was supposed he was not honest, for one thing; and that he would not tell the truth for another.

Who have you heard say so?

I heard Mr. Caleb Newbold say so for one; Mr. John Wilson for another, and others besides, whom I do not recollect.

Who else, sir, let us have their names?

I cannot recollect others precisely, but it was a general talk there. I mentioned to Mr. Randel. I told him that from the general character of Capt. Sutton, it would be an injury to him to have him there. People thought it an injury to Mr. Randel to have Sutton there, as his character did not stand fair. I thought it my duty to say so to him. I can't exactly state the words Mr. Randel stated in reply, but he said he could not get clear of him then. He would keep him a certain time, and then, whenever he could get clear of him, he would do it. Those were not exactly the words he used. Whenever he could get *shut* of him to an advantage, he would. Something to that amount.

Did he discharge him before he finished attaching?

Yes, sir. At least he came down and said that Mr. Randel had discharged him, and took his things away.

Mr. Caleb Newbold, did you say, is a member of the company?

Yes, sir.

Do you know any thing of a quarrel between Mr. Wilson and Capt. Sutton?

[*b* 47] I heard they had a quarrel, but I did not see it.

Re-examined by Mr. Ingersoll.

Your attention has been turned towards the health of Delaware city, how long have you resided there?

If I live till August next, I shall have been four years there. I had the bilious fever before that for seven years every year; but since that, I have not had a day's sickness there, and I have had a physician but once in my family while there, which shows our family was well.

You have said something of your having heard lately from Mr. Brown of his being sick, state when? where he told you? and what passed on the occasion?

I think it was last week, if my recollection serves me right. Not many days ago, he called down in our neighborhood. There was a fox hunting at a tavern next to Mr. Albertson's. Mr. Brown came up and spoke to me, and asked me if I would go to Mr. Albertson's that evening. I said yes, and asked at what time; he said at any time in the evening. I went down. Mr. Brown was

in the parlor. He asked me whether my recollection would serve me about a conversation he and I had on board of a steamboat last summer.

I told him no; my memory would not serve me that far. He stated things I did not recollect about the per centage; and things I had never heard of.

Did you ever hear any thing about per centage?

No, sir, not till Mr. Brown mentioned it to me on board of the steamboat last summer. He tried to impress it upon my mind that I had heard it. He told me to try and think, try and think—that certainly I could not forget it. I stated to Mr. Brown, (nearly in substance as I stated to you,) at Mr. Albertson's a few nights since.

By Mr. Tyson.

You speak of per centage, do you?

[*b* 48] Of the whole of this deposition—of the sickness—of the per centage.

All of it?

Nearly all; there are some things here that I did not mention.

Did you speak to him of Capt. Sutton, as you have here?

Yes, sir, exactly as I have here to-day. I told him more. He asked me if I had seen Mr. Randel since; I told him I saw Mr. Randel shortly after I saw him on board the steamboat.

Had you any conversation with him, Randel?

Yes, sir. I met him on Mr. Albertson's porch, a few evenings after that. There were several persons standing on the porch. I says to him, you and Mr. Brown have a law suit. He said yes. I said I had seen Mr. Brown a few days ago, and he had been telling me, and asked me if I did not know any thing about per centage.

I don't want you to state what Mr. Randel said.

He said nothing, but he laughed. Here the conversation ended.

Have you had no conversation since?

Yes, sir, a little to-day, and some yesterday. I came with him to the door?

About this matter?

To-day we have. I wanted to see my receipts. I thought you might want to ask me something of the date of my receipts. I wanted to see them. I went there. And have the dates now in my pocket.

Then the first conversation you had with Mr. Randel was to-day?

No. I said I saw him yesterday, that was the first time I saw him, except the night at Mr. Albertson's.

When he laughed, and said nothing?

Yes, sir.

[*b* 49] Who brought you to town?

The cars. The omnibus brought me from the Schuylkill?

Did the cars tell you to come?

No, sir.

Who told you to come?
I was subpœned by Mr. Randel to come?
When did he tell you he wanted your testimony?
They wanted me to come on Monday, but I could not come.
They, who?
Why the man who brought the subpœna.
You mentioned in your examination in chief, that you did not know that Mr. Brown had any calls abroad on Mr. Randel's business?
I said so. If he went on Mr. Randel's business, I did not know it, except the day that he and I went to New Castle on account of the attachments that I mentioned. If he went at other times, I did not know it; neither he nor Mr. Randel did tell me if he went.
He was absent occasionally, was he?
Well, I don't recollect whether he was. He may have been. I could not say that he was not.
Could you say that he was?
No, sir, I could not say that neither. I don't recollect whether he was or not.
You have said that he had no call abroad?
Not that I know of.
Then you know nothing about it?
I have told you that before.

HOWARD OGLE.

Taken, sworn, and subscribed, this 14th day of March, 1838.
W. H. KEATING, *Examiner*.

[*b* 50] Deposition of John T. Jones.

John T. Jones, of the Northern Liberties of Philadelphia, a witness of competent age, adduced on the part of the complainant, being duly affirmed according to law, did depose as follows:

Examined by J. R. Ingersoll, Esq.

Are you acquainted with Capt. Sutton?
Not personally.
Are you acquainted with his general character?
Not of my own knowledge.
But what people say?
Oh, yes.
What is his character for truth and veracity?
Generally, it is not considered very good.

Cross examined by J. R. Tyson, esquire.

When did you become acquainted with Capt. Sutton?
I am not acquainted with him. Never had any personal acquaintance with him.
How came you to hear of his general character, as you are not acquainted with him?

Through what I have heard my brother-in-law say of him.
Who is your brother-in-law?
William Boehm.
Did you ever hear any other persons speak of him?
Yes, sir.
Who?
I have heard persons speak of him occasionally, lightly.
Who, sir?
I have heard Mr. Harman King speak lightly of him.
What did Mr. Harman King attribute to him?
Well, I have heard of several occasions where Samuel
[*b* 51] Sutton was, where he behaved himself badly, with indecorum; he is somewhat abusive too, at times.
What did Mr. Boehm say of him?
I used to hear Mr. Boehm frequently speak of Samuel Sutton, and of his conduct down on the canal; he said he did not think he was the kind of man, that there could be that kind of confidence imposed on, that there ought to be.
Where is Mr. Boehm?
He is deceased.
Where does Mr. King live?
Mr. Harman King?
Yes.
He lives in Marshall street, just above the corner of Green street, on the west side. I think the fifth house.
Have you ever seen Capt. Sutton?
Yes, sir.
Has he ever been to your shop—your store?
I don't recollect.
Try to recollect?
I don't recollect that he ever was there.
Have you ever spoken to him?
I don't recollect that I ever exchanged a word with him—that I ever spoke to him.
You are the executor, Mr. Jones, of Mr. Boehm, deceased, are you not?
No, sir, he left no estate at all, or none of any account.
Are you not an executor or administrator?
No, sir, if there was any letter of administration taken out, it was by his brother, Philip Boehm, and the widow.
Do you know if the estate has a claim against Mr. Randel?
Indeed I can't say, sir.

JOHN T. JONES.

Taken, affirmed, and subscribed, this 14th day of March, 1838, before me,

W. H. KEATING,
Examiner.

[*b* 52] Deposition of Joseph Reeves.

Joseph Reeves, of the district of Kensington, a witness of competent age, adduced on the part of the complainant, being duly sworn according to law, did depose as follows:

Examined by J. R. Ingersoll, esquire.

Do you know Samuel Sutton?

I do.

Do you know his general character—what people say of him?

Well, his general character, among the common class of people, is considered not to be very good.

What is his character for truth and veracity?

His character for truth and veracity, among the class of people that I go with, frequent with, is not good; they say he would as lief tell a lie as the truth.

What occupation do you follow?

I follow oystering—not a very genteel occupation—the way I got acquainted with him, he followed the same business at one time.

Have you any variance or difference with him?

No, never.

Cross examined by Mr. Tyson.

You are the captain of an oyster boat?

No, sir; I am not the captain of an oyster boat.

Do you say you never owned a boat?

Yes, I have owned part of two, I may say three.

Did you ever go through the Chesapeake and Delaware Canal?

Yes, since the canal company and Mr. Randel have settled, I have been through it.

While he was attaching?

No, sir, since he settled. I was for four years not oyster-
[*b* 53] ing. I followed wagoning at that time.

Whom have you heard speak of Capt. Sutton?

One John Riggins, who went mate and pilot for Capt. Sutton, of a coasting schooner that he was master of. I went on a vessel with this John Riggins last fall, and in that way I heard his character.

You know Capt. Sutton?

I know him when I see him. Six or seven years ago I was well acquainted with him, when he was in the oystering business. Since that, I scarcely ever see him. When I see him in the street, I speak to him.

Have you ever seen any thing against Capt. Sutton yourself?

No, sir, I never have myself.

You were intimate with him?

We used to meet, and if my vessel was alongside of him, we would go on board each other's vessels; we were intimate if we met in Philadelphia at any kind of a gathering.

He is not a drinking man, is he?

No, sir, I don't think I ever saw him intoxicated; not to my knowledge, I never did.

Is he acquainted with a good many captains, their names?

That I cannot tell, I suppose he is acquainted with the names of the oystermen and the coasters that went through the canal.

Did you hear him blamed for his conduct on the canal?

I heard the oystermen blame him much. I followed wagoning then, and bought oysters. They spoke harshly of him—they thought it harsh usage to pay tolls twice.

Did they not blame him a good deal?

Yes, they found a good deal of fault with him—they did with the one who sent him.

Was this Riggins one of those?

[*b* 54] No, sir, he was with him this last year a coasting—he was his mate and pilot to New York.

From what you know of Capt. Sutton, would you believe him on his oath?

From what I know of him, I think I would believe him on his oath; but from what others says, I think I could not believe him.

What kind of a man is Captain Sutton, is he pretty determined and resolute?

That I cannot say—whether he is determined and resolute, for I have never been on board the same vessel with him. [But since he has taken to coasting, he has never had but his best man, or mate, or pilot, that would go more than one trip with him. That is what I am told, that the last man he had with him in New York [*o. b. e.*] or Philadelphia, he would quarrel with him and pay no wages. He would ship him by the month, quarrel with him, dismiss him, and pay him no wages.

Do you know this of your own knowledge?

No, sir.]

By Mr. Tyson.

I did not ask you that, I object to that.

JOSEPH REEVES.

Taken, sworn, and subscribed, this 14th day of March, 1838.

Before me, W. H. KEATING, *Examiner*.

[*b* 55] Deposition of William B. Reeves.

William B. Reeves, of the district of Kensington, a trader and wagoner, a witness of competent age, adduced on the part of the complainant, being duly sworn according to law, did depose as follows:

Examined by J. R. Ingersoll, esquire.

Do you know Mr. Sutton?

I know the gentleman when I see him, no particular acquaintance with him.

Can you state what is his general character, do you think ?
His general character, as I hear people say, is very light.
What is his general character for truth ?
Well, I am not able to say, further than as other people say of him.
Well, I mean, what do people say as to truth ?
They say his truth is not very good.

Cross examined by Mr. Tyson.

You know Capt. Sutton ?
When I see him.
Did you never talk to him ?
I have talked to him, it is some years ago.
So far as yourself have seen, was his conduct correct ?
I have not seen nothing amiss with him myself.
When you say that his character for truth is not good, you don't speak from your own knowledge ?
No, sir.

By Mr. Ingersoll.

From what other people say of him, would you believe him on his oath ?
Well, I don't think I should, taking what other people
[*b* 56] say of him ; for myself I have no right to dispute the gentleman's oath.

By Mr. Tyson.

From what you know of him, would you not believe him on his oath ?
Personally ?
Yes.
From what I know of him, I would. The man never laid any thing in my way, why I should not.
Do you know any thing of him why you should not ?
Not personally—no, sir.
You are a brother of Mr. Reeves who has just been examined ?
Of Joseph Reeves—yes, sir.

WILLIAM B. REEVES.

Taken, sworn, and subscribed, this 14th day of March, 1838.
Before me, W. H. KEATING,
Examiner.

[*b* 57] *Deposition of Isaac Gilbert.*

Isaac Gilbert, of the district of Kensington, captain, a witness, of competent age, adduced on the part of the complainant, being duly sworn according to law, did depose and say ?

Examined by J. R. Ingersoll, esquire.

You know Captain Sutton ?
I do.

Do you think you are acquainted with his general character—what people say of him?

Formerly, I was well acquainted with him; latterly, I have not.

What is his general character for truth and veracity?

Considered very bad, sir.

Cross examined by Mr. Tyson.

Are you well acquainted with him?

Formerly, I was very well acquainted with him.

On good terms with him?

Nearly always.

Quarrelled occasionally?

I don't recollect that we ever quarrelled. He owed me money, which may have occasioned hard thoughts.

He paid you?

Took the benefit.

Has he paid you?

Through course of law.

This has created hard thoughts, did you say?

Not in the least.

Did you not say you quarrelled with him?

He might have hard thoughts on his side.

What did he owe you?

The first debt was $20; that he paid through course of [*b* 58] law. The other I did not think worth sueing him for.

Did you sue him for the first debt?

I think I did not.

How could he have had hard thoughts?

Probably he might; he passed me in the street, latterly not. He showed some little resentment at one time; now he is as sociable as with any person he meets.

What did he show resentment for?

Can't tell.

What made him angry? What gave him hard thoughts?

Well, I suppose he was angry because I wanted my money—I asked him [for] the money frequently.

Would he feel spite for that?

I recollect now the only cause of his spite or resentment. He sailed a vessel for Jesse Williamson; he came to Philadelphia with a cargo of oysters from Virginia; he got them about half or two thirds out; Mr. Williamson called on me to put the rest out; said that he was not honest; had taken advantage of him in the load. After that, I saw some spite from Mr. Sutton.

Did you go through the canal when they were attaching tolls?

I did, sir.

Well, did he attach you?

I did not come back.

You run off, did you?

I did not; I was in his, Captain Sutton's, vessel when she was seized. ISAAC GILBERT.

Taken, sworn, and subscribed, this 14th day of March, 1838.
Before me, W. H. KEATING, *Examiner*.

[*b* 59] Deposition of Peter Albright, esquire.

Examined by John Randel.

Peter Albright of the Northern Liberties, esquire, a witness of competent age, adduced on the part of the complainant, being duly sworn according to law, did depose as follows:

You know Samuel Sutton?

Yes, sir.

Do you think you are acquainted with his general character—what people say of him?

I am. I know it in this State, in the State of New York and of Maryland—the character he bears in all three places. I have known him eight years; seen him frequently; most every time he is here—he trades here.

What is his general character for truth and veracity?

Very bad.

Are you a magistrate?

I am a magistrate in the Northern Liberties, Kensington, and Spring Garden.

Cross examined by J. R. Tyson, esquire.

Have you lived in New York?

No, sir, but I have been there on business, and have seen him in New York.

Have you ever lived in New York or Maryland?

Never for more than a week at a time. When I went on business, I staid a day or two afterwards with my friends.

Is your acquaintance extensive there?

In Maryland it is; not so much in New York. I am pretty well acquainted with persons in Maryland—police officers, magistrates, and other persons. (Squire Eckleberger told me that he passed under an assumed name.) This part of the answer objected to by Mr. Tyson.

What was he charged with?

Something or other, if my memory serves me right—I won't be positive, was voting at an election under an assumed name—Jones was the name he passed under. That is what Sutton told me afterwards. He stated, that he knew the old cockey, meaning
[*b* 60] Squire Eckleberger. I went off then, not wishing to continue with him.

How did you get him off?

I passed off with Col. Williamson, and I don't recollect whether any person went with me; he went with the others. There were some seven or eight of us together; we went all of us to 'Squire

Eckleberger's office; Col. Williamson and I went ahead, Sutton and the others came afterwards.

How did you get him off?

Off from where?

Off from the charge. I understand you to say, that you got him exempted from prosecution?

I gave a gentle hint to A. G. Rigely, the constable, that if it was some trifling affair, not to have him stopped, for all our property was aboard. We had come down on a visit of pleasure through the canal. We were going to the Ripraps. Old General Jackson was there; but the same evening we took a cart and took all our baggage, and left him; and he sailed—went to sea in a storm, raining pretty sharp—at least, he was away the next morning; we went all along the basin, could not find him, and we ascertained that he had gone. We had left some little trifling things on board—we could not get them.

[*b* 61] That is what you know of him in Baltimore. What did you know in New York.

Yes, I knew more; I heard the police men, and others, speaking of him.

I object to your saying any thing but what relates to his truth and veracity.

That is what I say. I heard Mr. Suter and several others discussing his character, and saying, that he was a lying scoundrel. They all appeared to have the same idea of him.

Who is this Mr. Williamson you refer to?

Col. Williamson, of Water street, below Market, Philadelphia, first door. He lives in Race street.

What is his first name?

Robert A. Williamson.

He was along with you on that excursion, was he?

He was.

What did you hear of him in New York?

I heard several persons speak of him as a scoundrel, and how he had wronged them.

You are acquainted also with his character here?

Yes, sir, for the last eight years, six to eight years, know him well.

In what part of the city do you know his character—is it to be gathered?

In all parts, Northern Liberties, Southwark, Kensington, and every part; all round the county.

What have you ever seen yourself?

Seen him swear to direct and positive falsehoods—perjury, sir.

Perjuries?

Yes, sir, swearing a man to have committed an assault and battery on him, that was not near him, in my presence.

How, sir, could he swear that an assault and battery was committed against him in your presence?

He did not know I was present.

[*b* 62] That is to say, sir, I suppose, that no assault and battery was committed when you were present?

None, that I could see.

Do you know whether there was an assault and battery committed when you were not present?

No, I do not know that.

Upon what authority do you say that he committed a flat perjury in saying, that an assault and battery was committed upon him?

Why, sir, in the circumstance that he mentioned to me, I saw it was impossible for it to take place.

What was that circumstance that he mentioned to you, from which you judged the impossibility?

I was satisfied from the position the time, that it was impossible, for the man was going down Callowhill street, and he up, on opposite sides of the way. There was an old grudge between them, from what he told me afterwards.

Who told you?

Sutton, himself.

Was the matter heard judicially before you?

No, sir.

Before whom was it heard?

I can't recollect, the warrant was brought to me. I was acting as constable of the first ward of the Northern liberties, at the time.

Who did he allege had committed the assault and battery?

I don't recollect the name of the person or magistrate, for he had a great many cases of the kind; I had always two or three of his cases on my hands. I never knew him to return from a voyage but what he had quarrels. It was a general observation with me: now we have Sam. Sutton back, we are to have assaults and batteries.

[*b* 63] You recollect neither the name of the person assaulted, nor the name of the magistrate?

No, he had so many cases I cannot recollect. If I were to go and hunt up my papers, I might find many warrants, &c., of his among them.

Then you do not recollect the names?

No.

Do you know him to have committed perjury on other occasions?

I cannot recollect any; there are many other circumstances, but I have them not present to my mind at this time. I was present, on several occasions, when he swore upon facts that I knew, and other witnesses swore to. He is a man, that I consider, as utterly destitute of truth—from what I have heard, and what I know, a dangerous character.

What has he done to you?

Nothing very particular; he attempted to strike me once at Baltimore, and I told him to stand off, or I would knock his brains out

with the pump brake; I don't recollect the precise words, I was much agitated; it was at the time he was moving my goods out of his vessel at Baltimore.

Did he strike you?

I can't say he did, the blow came very near me. Yes, he did, his hand struck me very slightly on the face.

What did you do to him?

Nothing.

You did not prosecute him?

No, I did not want to meddle with dirt, no how.

Did he swear an assault and battery against you?

He knew better, there were several witnesses by who saw him jump at me, without my saying a word to him.

[*b* 64] You had done nothing to him?

Not a word. I knew him in Chesapeake city, and all along the line of the canal as far as Black creek, we had to keep him concealed on board the boat; all were enquiring after him.

You were a constable at the time you went on this excursion?

Yes, I was when I was at home, but not acting as a constable when I was on the water. PETER ALBRIGHT.

Taken, sworn, and subscribed, this 15th day of March, 1838, before me, W. H. KEATING, *Examiner.*

[*b* 65] Deposition of Elihu Jefferson.

Elihu Jefferson, of the town of New Castle, (Delaware,) a witness of competent age, brought forward at the request of the complainant, to complete his cross examination, (which had been broken off before.)

Cross examination continued by J. R. Ingersoll, Esq.

Did you find your register?

Yes, sir.

Did you bring it up?

No, sir.

Where is it?

I left it at home.

Are you able to state how often Mr. Brown was there?

I cannot tell, except by reading from this memorandum, which I copied from my register; he might have been there in addition to dine, but we kept no account of it; we do not note in the register the names of persons who do not stay all night.

Are you able to state how often Mr. Brown was at your house?

He was there five times from June 17th, 1833, to 27th August, 1835; that is, he lodged there five times according to my register.

During the trial pending between the canal company and Mr. Randel, in 1833 or 1834, Mr. Brown staid at my house six weeks, amounting to thirty-six dollars, and charged to Mr. Randel in his account. I take it, that time was included in those five times before mentioned.

Who paid you?

Mr. Randel paid it by a note for six hundred dollars, including his whole account.

[*b* 66] Have you been finally paid the whole account?

Yes, sir; that note was given at ninety days. It was not paid when due; was protested for non-payment.

On the 27th September, 1837, Mr. Randel settled with me, gave me a check for eight hundred and fifteen dollars and ninety-four cents, which included the note, with interest, and protest, and all other claims against him to that date.

Was Mr. Brown at other times at your house on Mr. Randel's business, besides those five times?

I have no particular recollection; he often came in the day, and did not stay over night, as I have said before.

If so, have you been paid for that by Mr. Randel?

I do not know. I cannot say at this time. I do not recollect of any other being included in Mr. Randel's bill.

Were you present when Mr. McCulloch was paid by Mr. Randel?

I was.

State the time and circumstances?

I was present on the 27th September, 1837, when Mr. Randel settled with, and paid Wm. H. McCulloch, seven hundred and sixty dollars and twenty-eight cents, in full of his own account, and of his father's estate, on which he administered.

What for? Tavern expenses?

Store goods, I suppose, Mr. McCulloch is a storekeeper there.

Did you ever see him pay any body else?

Yes, sir, Mr. Blaney; C. D. Blaney.

When, and how much?

October 3d, 1837, by Chesapeake and Delaware Canal certificate or loan, as you may choose to call it, amounting to five hundred dollars, cash two hundred and three dollars 66 cents, making together $703 $\frac{66}{100}$.

[*b* 67] No other persons in your presence?

No other that I recollect of, these payments were made in my house; I was present at the time—that is the reason I know.

Re-examined by J. R. Tyson, Esq.

You got judgment against Mr. Randel?

Yes, sir.

That judgment is satisfied?

Yes, sir; the eight hundred and odd dollars I mentioned, was in full of the judgments and costs.

[Did you ever hear Mr. Blaney speak of his claim against Mr. Randel, before he was paid?

I think I have, but very seldom, not more than once.

What did he say about it?

I heard him say, he thought Mr. Randel ought to have paid all the costs at New Castle sooner.

Did you hear him complain of not being paid before?

He had mentioned to me, as I said before, once or twice, I think once, that he would like to have the money, and he thought Mr. Randel ought to have paid him before, or words to that amount. Objected to by Mr. Ingersoll.]

I think you mentioned before, who paid for Mr. Brown, except at the particular occasion referred to at the trial?

I am not prepared to say; Mr. Brown may have paid himself, but I did not take money generally at the bar; my brother attended to that; I think the principal part of Mr. Brown's expenses, were charged to Mr. Randel by me.

Did you not state in your former examination, that Mr. Brown had paid himself his bill?

I don't recollect what I mentioned. I think, I must have said, that I had no charge now against Mr. Brown; his expenses must have been paid if he was there.

[*b* 68] During the several times that you know that Mr. Brown was at your house, have you any charge against Mr. Randel?

No, sir; I had no other charge against Mr. Randel for Mr. Brown, but what is mentioned in the bill referred to.

That was for the time that he staid during the trial?

Yes, and sometimes afterwards. I have stated that he was there five times—I suppose it was four times after his stay there of six weeks. If he came afterwards, it must have been paid by Mr. Brown; at least I know nothing to the contrary.

By Mr. Ingersoll.

I do not understand you, for I find Mr. Brown's bills long after the trials; please explain it.

I mean to say that Mr. Randel has paid me for all charges that I had against Mr. Brown for expenses at my house.

That includes all times?

That includes all charges I ever made. Mr. Brown might have paid at times, when no charges were made; these charges were paid by Mr. Randel.

Is that receipt indicative of the circumstances of the payment to you?

It is.

It was given at the time it bears date?

Yes, on the 27th September, 1837.

(The receipt is herewith filed, marked A.)

By Mr. Tyson.

You say that all the charges that you made against Mr. Randel were paid by him?

Yes.

[*b* 69] How many times have you charged Mr. Randel for Mr. Brown?

That I am not prepared to say.

Have you charged him five several times—at five different times?

I cannot say without referring to the bill. (Examining the bill, marked B, the witness adds:) There is but one charge on this bill; that would be all that I could go by—the bills.

Then Mr. Brown has been at your house five times, and you have been paid once by Mr. Randel?

According to this bill; there may be other bills. I can speak only according to the bills, for I have no recollection.

Have you any charge for Mr. Brown against Mr. Randel, except what this bill exhibits?

Yes, for the six weeks; they are not in this bill.

Do you know of any more than two charges which you have made to Mr. Randel for Mr. Brown; that for six weeks, and that in this bill?

My memory does not serve me at this time; I had thought there were more.

You have known Mr. Brown to pay you bills?

As I said before, I have no recollection of my own, for I was not in the habit of receiving money at the bar. My impression was Mr. Brown had paid bills there; but at what times, and what amounts, I could not say.

You removed to New Castle about the time of the trial, or little after?

I moved there in May, 1832, and the trial was ended in January, 1834.

Mr. Randel was not in the habit of paying you—you charged him—and this bill of eight hundred and odd dollars was your charge against him?

Yes, this was my charge for him and his friends, whom he requested me to charge to his account.

[*b* 70] He did not pay in cash?

No, sir.

Do any other than those two charges appear in any of your accounts against Mr. Brown?

My register gives his name five times, but it does not give the charges, or to whom they were made.

I want to know how many charges appear against Mr. Randel on your books for Mr. Brown?

From my present recollection I can only mention two, though I always thought there were more.

Between what times did those five registers occur?

Between the 17th June, 1833, and the 27th August, 1835, as I have before mentioned.

Was Mr. Brown at your house before the first registry?

Not to my knowledge.

Or since the last?

Oh! yes, he has been there since.

By Mr. Ingersoll.

Was not Mr. Brown at your house in June, 1833?

He was.

Was he there in August, 1835?

He was.

Does your account (B.) include June, 1833, or August, 1835, at both which times he was at your house and charged?

It does not; but the account is between those two periods, and included, in my opinion, in the five. He was there five times—the six weeks was one time, this $1 25 on 18th July, 1834, was another time; it was included in the five times previously mentioned.

Was not one of the times that Mr. Brown was at your house, in June, 1833?

Yes, on the 17th of June.

[*b* 71] Was not another time at and after the trial?

Yes, sir, it must have been.

Was not another time in July, 1834?

Yes, sir, in July, 1834.

Was not another time in August, 1835?

Yes, sir.

And was there not a fifth time besides those four?

Yes, there must have been a fifth time, because five times were mentioned before.

And has not Mr. Randel paid you for all those five times?

That I cannot say. Whether Mr. Randel paid all, or Mr. Brown paid part himself, I am not prepared to say.

Have you any knowledge, personally, of Mr. Brown's having paid any of them?

My impression was that he had; but I think it was some small amount—it was no large amount, *that* I know.

Mr. Ingersoll put the same question again.

I don't know how to answer. My impression was that it was, though I never saw him pay any.

Have you any knowledge of your own of his having paid any?

I have no positive knowledge of my own of his having paid any.

What reason have you for doubting that he paid any one of those, instead of some of those occasions when he went and came away, and no charge was made?

I think I have heard my brother say that he had paid some small bills to him. That was my reason for saying that I had some impression that he had paid some.

Why do you suppose that your brother referred to one of those five times, rather than to any other time when Mr. Brown may have been there?

[*b* 72] I don't know that I did not intend to allude to these five times particularly.

Have you any reason to suppose it?

Because my account against Mr. Randel shows but two different charges.

What account?

The account rendered against Mr. Randel—the account that I have just had in my hand (B.) The first account was included in the note—the other contains but two charges; I cannot say from recollection.

Does that account run over the whole time?

It does not.

Have you any reason to believe that the payment said to have been made to your brother referred to any one of those five times?

I stated before, because my account does not show five different charges against Mr. Randel on Mr. Brown's account.

How do you know it don't?

Because there was only one item in the note; and there has been but one account rendered to Mr. Randel since, that I know of.

Is that the only account you have ever rendered to Mr. Randel?

That is the only one since the note, in which I recollect charges made on account of Mr. Brown; there may be others, but I do not recollect.

Did you remember any thing of this one, till it was exhibited to you here this afternoon?

No, sir.

This account amounts only to $43 87—your whole account
[*b* 73] to $815 94. Do you not suppose there were other accounts rendered to Mr. Randel?

[There must have been another account rendered which I do not recollect, which might have contained charges against Mr. Randel on account of Mr. Brown. Objected to by Mr. Tyson.]

Then you are satisfied that there was one other, or several accounts, rendered to Mr. Randel besides this?

Yes, there must have been from the face of this bill, because it won't make up the amount.

Being satisfied on that point, have you any reason to believe that either of the payments said to have been made to your brother were on account of any one of these five charges?

I am in the same situation as I was before. I cannot tell—it is impossible for me to say.

If such an impression now exists, state any reason that you have in favor of it?

I cannot state any more than I did before; that is, that there is only two items that appear in the account rendered by me, now before me, against Mr. Brown. It is impossible for me to give a decisive answer, because I don't know.

Point out those two?

One of them was included in the note of $600, dated 28th January, 1834—the other one the 18th July, 1834.

Have you any reason why a charge against Mr. Brown, in July, 1834, would have been introduced in an account against Mr. Randel, any more than one in June, 1833, or August, 1835?

I have none.

By Mr. Tyson.

In the accounts previous to the one marked "B," which are included in the note, is there more than one charge against

[*b* 74] Mr. Brown made to Mr. Randel?

Not to my knowledge.

Is there any charge for Mr. Brown against Mr. Randel since the last date, March 3d, 1834?

Not that I recollect of.

You stated, in reply to a question of Mr. Ingersoll's, that the $36 paid in 1834, was included in those five times?

I think so.

Is it in full for the five times?

No, sir; but for one of them.

E. JEFFERSON.

Taken, sworn, and subscribed, this 15th day of March, 1835, before me,

W. H. KEATING,
Examiner.

[*b* 75] A.—(36.)

In the Superior Court, New Castle county, May term, 1835.

Case, November 23d, 1835—Judgment.

ELIHU JEFFERSON, *vs.* JOHN RANDEL, JR. } 165.

Amount ascertained by prothonotary, - -	$705 23
Interest from November 23d, 1835, to 26th Sept'r, 1837,	77 92
	$783 15

The above is a true extract from the record.

Costs on judgment, - - - -	$9 29
	$792 44
	23 50
September 25, 1837.	$815 94

For J. C. MANSFIELD, *Proth'y.*
C. D. BLANEY.

Items of charge of $23 50.

John Randel, Jr., Esq., To E. Jefferson, Dr.

1836.		
Feb. 15	To hire of horse and gig by T. Janvier, Jr. -	$2 00
Sept. 28	Do do by W. Stockton -	50
" 28	conveyance of Mr. Stoddart and party to Welsh point - - - -	7 00
Oct. 17	conveyance of J. L. Lafferty, Rich'd Riddle, and John Cannon to Welsh point	4 00
Nov. 6	hire of horse and gig by T. Stockton -	1 25
	conveyance to Wilmington by T. Stockton	1 00
	J. S. Stoddart's bill for boarding, &c. -	7 75
	Making the amount, as above charged -	$23 50

New Castle, September 27, 1837.—Received from John Randel, Jr., eight hundred and fifteen dollars and ninety-four cents in full of all demands, judgments, and claims whatsoever, to this date, the said Randel not hereby admitting, but protesting against, the authority of the attorney who confessed the judgment in my favor against him, having been done without any knowledge or consent on his part.

September 27, 1837. ELIHU JEFFERSON.

[*b* 76] B.—(37.)

John Randel, Jr., Esq., To E. Jefferson, Dr.

1834.		
June 8	To hire of horse and gig 2½ days - -	$5 00
" 10	Do do do - -	1 50
" 10	1 dinner - - - - -	50
" 19	5 days' board - - - -	5 00
July 18	1 day's board for self and family -	3 75
	2 meals and lodging each, for 2 drivers -	1 25
	1 bottle ale - - - -	12½
	3 meals and lodging for Mr. Brown -	1 25
" 20	3 horses 3 days at livery - - -	4 50
" 23	hire of gig - - - -	50
" 26	hire of carriage and horses - -	2 00
" 26	hire of dearborn - - -	1 00
" 31	8 days, horses at livery - - -	4 00
1835.		
Feb. 16	3 days' horse and gig hire - -	6 00
" 17	1 day's horse hire - - -	1 00
" 18	4½ days' horse and gig hire by Lafferty -	4 50
" 26	1 day's horse and gig hire by Vining -	1 00
Mar. 6	Gig hire by Vining - - -	50
9	Do do - - -	50
		$43 87½

[*b* 77] Deposition of Cornelius D. Blaney.

Examined by Jos. R. Ingersoll, esquire.

Cornelius D. Blaney, of New Castle, esquire, being examined again, (produced by the complainant,) being duly sworn according to law, doth depose and say:

Do you know any thing of the papers placed before you?

All those papers were in my possession formerly, as secretary of the New Castle and Frenchtown Turnpike and Railroad Company.

(The witness alludes to the five papers herewith filed, marked A, B, C, D, and E.)

That account, has it been paid?

The account was paid, $155; there seems to have been an error of $1—$156.

Whose handwriting is that paper?

I don't know.

The first, A, was a bill sent to the office by the person who had the charge against the company. The heading does not show who had the account for repairing theodolites and engineers' instruments, and for a new one;

[The second paper, B, is in the handwriting of Mr. Randel.—Objected to by Mr. Tyson.]

The third is an account, "C", seems the same as the first, with an order to pay the amount to Mr. Brown.

The fourth and fifth are admitted by Mr. Tyson to be subscribed by, and entirely in Mr. Brown's handwriting.

C. D. BLANEY.

Taken, sworn, and subscribed, this 15th day of March, 1838, before me,

W. H. KEATING,
Examiner.

A—(39.)

New Castle and Frenchtown Railroad, Dr.

1830.			
July 9	Repairing theodolite - -	17 00	A
Aug. 12	Do. do. & altered do.	28	
" 25	Do. transit inst. - -	20	
Sept. 25	Do. level and do. -	11 50	Paid Aug. 27, 1831.
1831.			
April 16	Do. transit inst. - -	10	$138.
" 26	Do. theodolite - -	31 50	
May 31	Do. level - -	5	
June 20	Do. " - - -	10	
July 26	New engineer's level* -	120	
"	Packing box - - -	1	
May 9	Repairing transit inst. - -	4	$138.

* This level was relinquished in favor of Ithaca and Oswego company.

A.—Continued.

1831.			
Aug. 29	Repairing engineer's level -	4	
" 30	Do. theodolite - -	20	
Sept. 5	Do. transit inst. - -	12	
" 27	New engineer's level - -	120	
		$156 00	balance.

[*b* 79] B—(40.)

The New Castle and Frenchtown T. P. and Railroad Company,
To Stancliffe & Draper, Dr.

1831.			
July	Repairing theodolite - -	$17	
Aug. 12	Do. do. and altering the same - - -	28	
" 25	Do. transit instrument -	20	Paid Aug.
Sept. 25	Do. level, &c. - -	11 50	27, 1837.
1831.			$138.
April 16	Do. transit instrument -	10	
" 26	Do. theodolite - -	31 50	
May 31	Do. level - -	5	
June 20	Do. do. - -	10	
Aug. 9	Do. transit inst. - -	4	
" 29	Do. level - -	4	
" 30	Do. theodolite - -	20	
Sept. 5	Do. transit instrument -	12	
" 27	New Engineer's level - -	120	
		$293	
Aug. 27	Cr. by cash - - -	138	
	Balance	$155	

Engineer department of the New Castle and Frenchtown Railroad,
9th December, 1832.

I have examined the above account, and find the same correctly stated.

JOHN RANDEL, JUNR.
Engineer-in-chief.

To the President and Directors of the New Castle and Frenchtown T. P. and Railroad Company.

[Rec. XLIII, XLIV, 1843.]—24.

[*b* 80] C—(41.)

PHILADELPHIA, *Oct. 22d*, 1831.

New Castle and Frenchtown Railroad Company,
To Stancliffe & Draper, Dr.

Aug. 29	For new glass for spl. level - - -	$4 00
" 30	repairing theodolite - - -	20 00
Sept. 5	do. transit instrument - -	12 00
" 27	plain engineer's level - - -	120 00
	$156.	$156 00

Please pay the above amount to W. L. Brown, Esq.
EDM. DRAPER.

[*b* 80] D—(42.)

Wm. Linn Brown, No. 112, *Filbert st.*

If a check is sent to me on the Farmers' Bank payable to my order, as requested by Stancliffe and Draper, the necessary vouchers will be sent on the receipt.

W. L. BROWN.

[*b* 81] E—(43.)

PHILADELPHIA, *January 2d*, 1833.

$155 $\frac{00}{000}$

Received of the New Castle and Frenchtown Railroad Company one hundred and fifty-five dollars, being the amount of Messrs. Stancliffe and Draper's bill against the said company, made payable to my order.

WM. LINN BROWN.

PHILADELPHIA, *January 2d*, 1833.

Dear Sir: I have the pleasure to acknowledge the check of the New Castle and Frenchtown Railroad Company on the Farmer's Bank of New Castle for the above amount, viz: $155, which has been paid over this day, for which please accept my acknowledgments.

Yours, respectfully,
WM. L. BROWN.

To C. D. BLANEY, Esq.

[*b* 81] Deposition of Dr. James Couper, jr.

James Couper, jr., M. D., of the town of New Castle, in the State of Delaware, a witness adduced on the part of the complainant, being duly sworn according to law, did depose as follows:

Examined by J. R. Ingersoll, Esq.

A paper is put in the hands of a witness, and he is requested to state what the professional services were, for which that fee was paid, where paid, and to what patient rendered?

I received this sum of eight dollars on the twenty-eighth day of January, eighteen hundred and thirty-four, for medical services rendered Mr. Brown, the gentleman now here. I did not know his first name then, and do not find it in my book; on two different occasions those services were rendered—the first in the month of May, 1831; the other in the month of May, 1832; they were rendered in the town of New Castle on each occasion.

(The receipt is identified, marked "W. H. K.," and copied below this deposition.)

It was on one of those occasions certainly, Mr. Brown was in Mr. Randel's house; on the other occasion I cannot say where he was. Nor can I say on which occasion he was in Mr. Randel's house—whether the first or the last.

[*b* 82] Do you remember when you rendered Mr. Randel an account of these services?

The account of those services bears date the 22d of January, 1834.

(A bill is shown the witness, and identified by him, marked W. H. K. on the face, and hereto annexed, marked G.)

Cross examination by J. R. Tyson.

Did you ever render an account to Mr. Brown?

I have no recollection whether I ever did. I cannot say if I ever rendered an account first to him, then to Mr. Randel, it is so long since; but this I am certain of, that I never received payment from Mr. Brown.

Who told you to render it to Mr. Randel?

From the tenor of this letter, (attached to the bill,) which I recognise as my own, I presume I had been requested by Mr. Randel to return it to him, as you see I sent it at his request.

Did you render it to him in consequence of your visiting Mr. Brown in his house?

I think the inducement is referred to in this letter. My recollection does not serve me. I have no recollection of it independent of this letter.

JAS. COUPER, Jr.

Taken, sworn, and subscribed, this 19th day of March, 1838.
Before me, W. H. KEATING,
Examiner.

Copy of the receipt, in John Randel's receipt book, identified by the above witness, and marked on the face of it W. H. K.

NEW CASTLE, *January* 28, 1834.

Received of John Randel, jr., his check, payable to my order, for the sum of eight dollars, dated 5th March, 1834.
$8 00.

(Signed) JAMES COUPER, Jr.

A true copy.

W. H. KEATING,
Examiner.

G.—(46.)

NEW CASTLE, *January* 22, 1835.

[*b* 83] John Randel, Jr., Esq.,

To James Couper, Jr., Dr.

To medical services rendered (in the case of your child) in June, 1833 - - - - - -	$2 00
Amount of Mr. Brown's account - - - -	$8 00

DEAR SIR: Above, I send you the statement you requested me to furnish, and enclose three small parcels of vaccine matter, marked 1, 2, and 3. From 1 and 2 I have myself vaccinated, and with uniform success. No. 3, is the scab from a child's arm, vaccinated by me, when the course of the disease was very firm. I have not used the scab in my own practice, but know it to be genuine. If practicable, I will add another to these parcels before you leave New Castle.

Very truly, your friend,
JAS. COUPER, Jr.

JNO. RANDEL, Jr.

[*b* 84] Deposition of Allan Campbell.

Allan Campbell, of the city of Brooklyn, State of New York, a witness of competent age, adduced on the part of the complainant, being duly sworn according to law, did depose as follows:

Examined by J. R. Ingersoll, Esq.

You rendered services to Mr. Randel, sometime during the progress of his suit against the Chesapeake and Delaware Canal Company; be so good as to state when it was, as well as you recollect?

Between the 1st of November, 1833, and the 1st of February, 1834, about the first of November.

Had you an opportunity to see the services for which Mr. Brown was employed by Mr. Randel?

Yes, sir, being in Mr. Randel's house during the whole of the trial at New Castle.

What was the kind of services rendered by Mr. Brown; how was he employed?

Copying papers part of the time. All the service he did render Mr. Randel there, was in copying papers.

Who made out the calculations that were necessary?

I did, with Mr. Lee, another engineer.

Did you and Mr. Lee attend there, professionally, for that purpose?

Yes, sir, we were employed at the time we went there, on the Ithaca and Oswego Railroad, and we returned afterwards to the railroad.

Were any other persons employed besides Mr. Brown to copy papers?

Yes, sir, Mr. Benj. Janvier and Mr. Ritchie at the same time.

At the same time; do you mean during that trial?

Yes, sir.

[*b* 85] During the time these gentlemen were not copying papers, what were they doing?

Doing nothing, resided in the village. I speak of Mr. Richie and Mr. Janvier.

As to Mr. Brown?

Mr. Brown, during the time of the trial, was taking notes in court of the progress of the trial and of the speeches.

Did you know from him for what purpose?

I have an indistinct recollection that he said it was for his own use, it might be of use afterwards. [That was at least the [*o. b. e.*] understanding with those in the house.—Objected to by Mr. Tyson.]

Mr. Randel at the same time had Mr. Janvier reporting for him. It was my business, during the nights, to copy out those reports, when read by Mr. Janvier. Copy them out in full.

Do you know that handwriting?

(A receipt is shown, which is a page of a memorandum book, on which an account between Mr. Randel and Mr. Brown is written, marked W. H. K., on the face; account copied below the deposition.)

I think it is Mr. Brown's.

Have you seen him write?

Yes, often; that in pencil at the bottom is by Mr. Randel.

Who carried the papers to and from the court-house?

Mr. Brown carried some of the papers in a bag. There was a trunk of papers carried by Mr. Randel's servant also.

Whom were the papers delivered to, who packed them up, took them in his hands, at the end of the trial?

I helped to put the papers in the trunks, did put most of them in; they were then left in the charge of Mr. Benj. [*b* 86] Janvier, to whom, I believe, Mr. Randel gave the key of his house.

Were the papers all collected as was believed?

Yes, sir, we looked the house, high and low, put all the papers in trunks—were very careful about it.

Cross examined by J. R. Tyson, esquire.

Was the servant who assisted Mr. Brown to carry the papers, both to and from, black or white?

I did not say that the servant assisted Mr. Brown, I said that Mr. Brown carried a bag of papers—the servant carried a trunk—he was black.

Did you stay, while you were in the employ of Mr. Randel, at the hotel or at Mr. Randel's House?

At Mr. Randel's house.

During the whole period?

Yes.

Were you one of Mr. Randel's clerks?

Yes, sir; at the time I came there I was an assistant engineer.

Had not Mr. Brown a room different from yours, and that of the other clerks?

Mr. Brown generally wrote, when he did write, in the front room of the house, I wrote in the back; though I very often, I may say, perhaps, wrote as much in one room as in the other—*I did.*

Then you were frequently separated, if you were in other rooms?

We usually had the doors open between the rooms.

Did the other clerks write in your room, except Mr. Brown?

They wrote generally in the back room—yes, sir. I was frequently in the front room making calculations for Mr. Clayton.

What was the front room used for?

[*b* 87] Used for writing in, and dining in.

Was it Mr. Randel's room?

They were all his rooms.

Yes, but which room did he occupy?

I presume he was as much in one room as in another.

Did Mr. Brown evince any zeal in behalf of Mr. Randel's interest, or did he seem to be indifferent?

He did not seem to be indifferent; all were zealous, I suppose, and Mr. Brown as much as the rest.

Then all you knew Mr. Brown to do, was to write—copy?

Yes, sir, and carry the papers as I said before; and he used to come from court to the house to bring a paper when it was wanted.

Have you ever known him to consult Mr. Clayton, or Mr. Clayton with him, on any branch of the business?

I don't know what you mean by consultation.

I suppose you know the meaning of the word?

Yes, sir, I know the meaning of the word. I think I may say he did consult Mr. Clayton, and so did I—and Mr. Clayton consulted him, and he consulted me.

Did you ever know Mr. Randel to consult him?
Yes, sir.
He consulted you also, I suppose?
Yes, sir, often.
Then you were as important a personage as Mr. Brown, you think?
Yes, sir, I think I may say so, safely.

ALLAN CAMPBELL.

Taken, sworn, and subscribed, this 19th day of March, 1838.
Before me, W. H. KEATING, *Examiner*.

[*b* 88] Copy of an account in Mr. Randel's memorandum book, verified by this deponent.

John Randel, Jr., Dr. to Wm. L. Brown, for moneys paid for him, viz:

1834.			
Aug 19.	To St. Paul's church, - - -		$10 00
"	Stancliff, - - - -		15 00
"	McClay, - - - -		3 00
"	Redrick, - - - -		5 00
"	Jameson, - - - -		0 50
"	the paper, - - - -		4 00
"	cash paid for four visits to canal, -		13 00
Nov. 10 to 22.	" " visit to Dover, -		9 75
"	" " Peter, - -		1 50
"	" " Expenses in road,		1 00
Nov. 16 & 24.	Expenses to New Castle, from Philadelphia, and back, - -		2 50
			$65 25
	Cr. By cash received, -	$30	
	" Cash, - - -	5	
	" Newspaper, - -	6	
	" ? indistinct,		
	" Mrs. Peters, - -	10	
	" Expenses to Dover, -	5	
			56 00
			9 25

The rest of the account not in Mr. Brown's handwriting.
A true copy,

W. H. KEATING,
Examiner.

Endorsed (*b* 29 to *b* 189.)

JOHN RANDEL, Jr.
vs.
WILLIAM LINN BROWN. } In equity.

Circuit Court United States.

Interrogatories for witnesses who may be produced and examined under a commission to Dover, in the State of Delaware, on the part of the complainant.

1st. Do you know the parties above named, or either of them, and how long have you known them, respectively?

2d. Have you, or have you not, any knowledge of the intercourse and relations between the complainant and respondent? How did your knowledge arise? What connection existed between yourself and the said parties? Were you, or were you not, acquainted with the employment and services of the respondent for the complainant; if such employment existed, or services were rendered? Did, or did not, your knowledge of the business of the complainant, and the employment of the respondent, continue during the whole progress of the suit between the complainant and the Chesapeake and Delaware Canal Company.

3d. Have you any knowledge of the services rendered, or employment attended to, by the respondent for the complainant? Of what did such services or employment consist? At what time or times were the services rendered, or employment attended to and performed, and in what capacity were they rendered?

4th. Do you or not know that any other person or persons were employed by the complainant at or about the same time, when respondent was employed by him, in a similar way? Name them. When was such other person or persons employed? What compensation did such other persons receive from the complainant?

5th. Did or did not respondent visit Washington to consult with and assist the counsel of the complainant in the preparation of the pleadings in the suit of John Randel, jr., against the Chesapeake and Delaware Canal Company? Was it or was it not at any time necessary that he should do so? Did he visit Washington for that purpose, at the request of the complainant's counsel? If yea, at what time or times? What did he do while there, and for how long a period?

6th. Did respondent at your request, or to your knowledge, prepare any interrogatories for witnesses to be examined in said suit?

7th. Did respondent perform any duties at any time, except those of a clerk or messenger? If aye, state the time or times, and at whose instance?

8th. Did or did not respondent at any time, and when, make a claim upon the counsel of the complainant for compensation or reward, or assert a promise to that effect? State the nature and circumstance of such claim or assertion? If made in writing, annex the written paper by which it was made, if you have the same, or

if you have it not, state what has become of it? Whether you are able to find the same; and if it be lost, or mislaid, annex a copy; or if you have not, and cannot procure a copy thereof, state as fully and at large as you are able to do, its purport, contents, and substance? Was or was not any promise ever made to the respondent by the counsel for the complainant?

9th. Did or did not respondent ever complain of his poverty? Did he not borrow money from you; to what amount has he ever returned it?

10th. Do you know any other matter or thing that may be to the advantage of complainant? If yea, state the same as fully as if particularly interrogated thereto, both before and after any cross interrogatory which may be put to you by respondent?

J. R. INGERSOLL,
For the complainant.

MARCH 16, 1838.

Commissioners on the part of the complainant at Dover, Henry M. Ridgely, esquire, William Huffington, esquire, or either of them.

A true copy from the original filed.

FRA. HOPKINSON, *Clerk.*

MARCH 31, 1838.

JOHN RANDEL, Jr.
vs.
WILLIAM LINN BROWN. } In equity.

Circuit Court, United States.

Cross interrogatories to be administered to the honorable John M. Clayton, at Dover, if examined under the interrogatories of complainant, filed on the 16th day of March, 1838, the respondent declining to file cross interrogatories for any other person who may be examined by the complainant under the commission, and protesting against such examination as illegal.

1st. What power, if any, had you from complainant to employ an assistant in preparing the case of John Randel, jun., against the Chesapeake and Delaware Canal Company for trial? Was it a verbal or written power? If verbal, state fully and at large its nature and its object? If in writing, and in your possession, attach the same to this commission. If not in your possession, state what has become of it. State as fully and at large as you are able to do, its purport, contents, and substance. If you had a power to employ such assistant, who was to pay for his services, and who acted as such assistant to you in preparing and drafting the pleadings, and performing the other necessary duties and labor imposed upon such assistant? Were or not the duties and labor arduous and important? Were they or not faithfully performed? State the nature and extent of these duties as fully as you can.

2d. Have you or not ever heard the complainant express his sense of obligation and gratitude for the services rendered to him by the respondent? Did you or not ever hear him express his indebtedness to the respondent for the same? State fully and at large what you know upon this subject, as to what was said by complainant.

3d. Were the pleadings in the said suit voluminous or brief? Did or did not the respondent attend you at the city of Washington, in March, 1833, and at other times and places, before and since, in the preparation of these pleadings? Was the preparation laborious, or otherwise? If respondent assisted you, how were his duties performed; zealously and intelligently, or otherwise? Did respondent manifest interest or indifference in the affairs of the complainant while engaged with you at Washington in March, 1833, and at other times. If the respondent displayed interest in the affairs of the complainant at the times mentioned, state so far as you can the reasons for your so answering, and any circumstances you may be acquainted with by which such interest was shown. State at what sum you would fix the compensation of respondent for the various services rendered by him at the time and times mentioned by you, of which you have a particular knowledge in this department of his duties in the said suit.

4th. State what you know touching the duties of the respondent in the progress of the said suit. Whether or not it was necessary for him to leave Philadelphia? Have you or not known him to go to New Castle and to Dover to render services and assistance for the complainant? Did he or not often do so? Did you or not ever know him to refuse or neglect to do so when necessary or desirable? Did he or not often attend at New Castle during the court terms to labor for the complainant, and render you assistance as his counsel? Was he or not present at the trial? If yea, state whether or not his services were important or not to complainant, and of what character. Did respondent manifest zeal and ardor, or indifference, during the trial? If zealous and ardent in his services to complainant, state how he manifested it. Did he or not labor at night, as well as in the day, for complainant during the trial? State at what sum you would fix the compensation of respondent for the various services performed by him at this time for the complainant, of which you have a particular knowledge.

5th. How did the trial terminate between John Randel, jun. and the Chesapeake and Delaware Canal Company? What was the amount of the damages rendered by the jury? Was the verdict paid in cash by the Chesapeake and Delaware Canal Company to John Randel, jr., or not? If not, how was the verdict settled, for what sum, and when?

6th. In the spring of 1835, did you or not attend the court at New Castle on behalf of the complainant, to argue the attachment

cases for him for the tolls attached by him in the hands of the garnishees of the Chesapeake and Delaware Canal Company, under the judgment obtained by him against the said company? If yea, was the respondent there at that time, or not? Did he assist you in the necessary duties devolving upon you at that time, or not? Was there or not a case stated? State what was done at that time. Afterwards, in the summer of 1835, did you or not argue the attachment cases of Crowell and Shoemaker, at Dover, for the complainant? Was or was not the respondent there also, at that time, rendering assistance to you, and performing services for the complainant in the said cases? Did he labor faithfully for the complainant, or otherwise? If you answer, that respondent was engaged at the times and places mentioned in this interrogatory, state what value you would put upon the services rendered by him to the complainant at those times of which you have a particular knowledge.

7th. Were you not engaged in the city of Philadelphia, on behalf of the complainant, in the spring of 1836, in effecting a settlement or compromise of the judgment obtained by the complainant against the Chesapeake and Delaware Canal Company? Was or not a settlement or arrangement effected? Was or was not the respondent engaged at that time in laboring for the complainant? Did he or not aid in bringing about this result? State if the services of the respondent were valuable or not to the complainant, and whether or not he labored at night as well as during the day, at this time. After the settlement was effected, had you or not any conversation with the complainant about the services of respondent? State what was said, if any thing, at that time by complainant on that subject; did he or not state he would pay respondent for his services? Did he or not acknowledge his obligation to do so? Did he say respondent's services had been valuable to him or not? Did he say respondent had served him faithfully and ardently or not? Did he say any thing about having paid respondent a note for three hundred dollars as a payment to him or not? If you answer in the affirmative, that respondent was engaged for complainant in effecting the settlements with the said canal company, state what value you would put upon the services rendered by him to the complainant at that time.

8th. Was or was not the respondent engaged in the service of the complainant before you were retained by him as counsel? Was or was not the respondent engaged in the service of complainant at the time you were retained by him as counsel? When were you first engaged? During the whole period you were engaged as the counsel of the complainant, was or was not the respondent, at sundry times besides those mentioned in the 3d, 4th, 6th, and 7th cross interrogatories, engaged in serving the complainant in his cause against the said canal company? Did he or not travel from his

home, in the city of Philadelphia, to meet you on the business of the complainant? Have you or not received from the respondent, often, letters and documents relating to the business of the complainant? Have you or not written often to respondent on the business of the complainant, requesting information? In your correspondence with respondent on the business of the complainant, was respondent considered by you in the character of a clerk for complainant, or as his friend, confidential assistant, and agent? Were or were not the duties and services of the respondent other than those of a mere clerk? Were they or not those of a confidential assistant and general agent for the complainant? Was he or not so considered and employed by you?

9th. Has or has not respondent ever made any claim against you for services rendered to complainant? Has he or not ever asserted that you owed him any thing therefor? Has or has not respondent spoken to you of his not being in independent circumstances, as the cause why he insisted upon being paid by complainant for his services? Did he or not ever speak to you of his pecuniary wants in any other connexion or view? What did he say he would do as regards his claims upon complainant for his services, if he were in independent pecuniary circumstances? Did he ever or not complain of his present wants being so pressing as to be unable to get along without periodical payments from complainant? Did you ever see complainant make payment of any sum to respondent? Did respondent ever borrow money of you or not, in more than one instance? Did he or not since do so? If yea, how large an amount, and for what purpose? Was it not returned to you? Did or did not respondent, in some instances, disburse small sums for you in the city of Philadelphia? Is he or not now indebted to you? State the general conduct and character of respondent in his connection with you as the counsel of the complainant, in regard to pecuniary matters?

10th. Have you or not endeavored to obtain a settlement between the complainant and his counsel in Baltimore, Mr. Scott, for professional services rendered by said counsel to complainant? What success had you in obtaining a settlement from the complainant for him? Did or did not the counsel in Baltimore complain of the complainant? Were these complaints effectual or not in obtaining a settlement through you? Did you or not ever obtain a settlement from complainant of the claim of said counsel?

11th. Do you know any other matter or thing that may be to the advantage of respondent? If yea, state the same as fully as if particularly interrogated thereto.

J. R. TYSON,
for Respondent.

Commissioner on the part of the respondent, at Dover,
William Hoffington, esquire.
March 31, 1838.

A true copy from the original filed.

FRA. HOPKINSON,
Clerk Circuit Court.

March 31, 1838.

JOHN RANDEL, Jr., a citizen of the State of Delaware,
vs.
WILLIAM LINN BROWN, a citizen of the State of Pennsylvania.
} No. 1.—In Equity.

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, of April session, 1837.

The deposition of John M. Clayton, of Dover, Delaware, aged forty-one years, or thereabouts, a witness produced, sworn, and examined before me, Henry M. Ridgely, commissioner in the above cause, as appears by the commission hereunto annexed, duly empowered to take the depositions of certain witnesses in the above named cause, the said deposition being taken at the office of the said Henry M. Ridgely, in the town of Dover, in the State of Delaware, on the 6th and 7th days of April, in the year of our Lord one thousand eight hundred and thirty-eight, in behalf of the above-named complainant.

To the first interrogatory he answers and says: That he knows the parties abovenamed; that he has known John Randel, jun., for about ten or eleven years; that he has known William Linn Brown, esquire, the respondent, about six or seven years.

To the second interrogatory he answers and says: He has some knowledge of the intercourse and relations between the complainant and respondent. His knowledge arose out of his own employment as counsel for John Randel, jr., in the case formerly in the courts of Delaware, wherein said Randel was plaintiff, and the Chesapeake and Delaware Canal Company was defendant. Mr. Brown was a warm and zealous friend of Mr. Randel, and did many things for him while deponent was counsel for said Randel. Deponent is not certain, but thinks his own acquaintance with Mr. Brown may have commenced in the summer of 1832. It may have been earlier; at that time deponent was engaged to act, not only as counsel, but as attorney for John Randel, jr., to plead his case to issue, prosecute it to judgment, and try it through all the courts of the State to which it might go; and said Randel was bound to employ such assistant counsel as deponent should desire. Deponent was requested by said Randel to act as counsel for him in that case, and in another against a certain Benjamin Wright, as early as 1830 or 1831; but deponent having looked into the cases, and found that they were full of difficulties which could not be surmounted without greater labor than he was willing to bestow upon

them in his then circumstances, had declined to act for him as attorney. Deponent thinks that he then, or even at an earlier period, saw Mr. Brown acting as a friend to Mr. Randel about those suits, though it has been so long ago that he cannot certainly say. Deponent was afflicted with sickness in the fall of 1831, and for that, and other reasons, had then resolved to have nothing to do with Mr. Randel's suits. Deponent thinks it was about the 27th or 28th, perhaps the 31st of December, 1831, when Mr. Randel employed this deponent, as before stated. The contract of said Randel with deponent was in writing, and signed by both the said Randel and deponent. Deponent has long since given up his duplicate copy of said contract to said Randel, and has no copy to refer to; but in substance, deponent remembers that he contracted to take upon himself the responsibility of managing his troublesome case against the canal company, and the said Randel was to employ such counsel to assist deponent as deponent should desire. Deponent cannot say that, under the terms of *that written* contract, Mr. Randel was expressly bound to furnish him with an amanuensis, or clerk, when he should desire it; but the said Randel did so furnish deponent, and deponent always held him bound to do so, and does yet consider that he was bound to do so. Deponent says that his knowledge of the business of the complainant, and the employment of the respondent, did continue during the whole progress of the suit between the complainant and the Chesapeake and Delaware Canal Company, after the 31st of December, 1831; and further, in answer to this interrogatory, this deponent saith nothing.

In answer to the third interrogatory he answers and says: That, in the summer of 1832, it became necessary, in the progress of the said suit of the said Randel against the canal company, to file the plaintiff's replications to the defendant's pleas; the pleadings were very much elaborated on both sides, and were very complex and troublesome. The first set of pleas filed by the defendants, that is the said canal company, deponent thinks were sixty-two in number. The pleadings were conducted throughout in the most adversary manner; it became necessary to file a replication, or answer, in strict form to each plea. To enable deponent to draw each replication, he requested Mr. Randel to send him an amanuensis, or clerk. Mr. Brown, the respondent, then came from Philadelphia to Dover, where deponent resided, and remained in Dover during the whole time deponent was engaged in drafting said replications, which deponent thinks was not less than two weeks. Deponent dictated said replications, and the said respondent wrote them for him as he dictated. There was a great deal of writing done at that time by Mr. Brown for Mr. Randel, at deponent's request; the replications were written, corrected, and copied, for the purpose of being filed; all the writing of which was done by Mr. Brown. Mr. Brown was often kept up till very late at night by deponent while

so engaged; and as the pleadings were very intricate and perplexing, Mr. Brown often sat for a long time confined at the table while deponent was deciding how to proceed. Mr. Brown also at that time did other services connected with the cause; he transcribed such papers and passages from law authorities as deponent directed, and he discharged his duty as a very intelligent and faithful clerk and friend to Mr. Randel. He manifested great anxiety and zeal for Mr. Randel, whom he always spoke of as his friend; and he then, and at all times, so far as deponent's knowledge extends, appeared to be willing to omit no labor which he could properly perform to assist Mr. Randel. Deponent knows nothing of any contract between Mr. Brown and Mr. Randel, but always supposed Mr. Randel was to pay him for his services. Mr. Brown made many copies of the replications abovementioned, and also of the declaration, and all the pleadings in the [case, at the] request of Mr. Randel. Some of these copies were furnished to the counsel for Mr. Randel, and deponent thinks one for each member of the court. Deponent thinks it was in the fall of 1832 that the case was first pleaded to issue; and the pleadings at that time probably covered two hundred pages. At the fall term of 1832, the counsel for the canal company asked leave to withdraw their pleas, and obtained it on payment of costs; and then the record was broken up, and both parties were directed to plead again. New counts were added to the declaration; twenty-nine new pleas and demurrers were afterwards filed by the counsel of the company, to each of which deponent filed a replication, or a joinder in demurrer, as the case might require, all of which were drawn out at full length; these were followed by rejoinders, and sur-rejoinders, and issues, all drawn out at full length; that all the said last mentioned pleadings, on the part of Mr. Randel, were dictated by deponent, and written down by Mr. Brown, according to the best of deponent's belief; though it may have been that in some instances deponent may have done some part of the writing, or perhaps procured some other clerk of Mr. Randel's to assist him; but deponent is certain that Mr. Brown did the great mass of the writing. Mr. Brown did several times attend at Dover as clerk, or amanuensis, in transcribing said papers for Mr. Randel. Mr. Brown attended during the whole trial of the cause at New Castle, between the said Randel and the said canal company. The trial of demurrers before the court occurred at two several terms; first at the May term, 1833, when four days were consumed in the argument of the demurrers, and the second at the November term, 1833, when the argument on the demurrers occupied six days. Judgments having been rendered on the demurrers, the trial came on before the jury on Monday, 9th of December, 1833, and the verdict was rendered on 25th January, 1834, for the sum of two hundred and twenty-six thousand eight hundred and eighty-five dollars, or thereabouts, in favor of the said John Randel,

jr., for which sum judgment was rendered with costs. The counsel concerned in the case were *James Rogers, esq.*, *Charles J. Ingersoll, esq.*, *George Read, jr. esq.*, *George W. Smith, esq.*, and this *deponent*, for the plaintiff; and Walter Jones, esq., James A. Bayard, esq., and Robert Frame, esq., for the defendants. Mr. Brown was not a counsel for Mr. Randel, as this deponent considers, but he attended the trial, and often seemed to have charge of many of the plaintiff's papers. During the trial Mr. Brown copied many papers for Mr. Randel, or his counsel; deponent made an abstract of the pleadings and issues in the cause, and deponent thinks that Mr. Brown made a copy of the said abstract for each one of the three judges who sat on the trial. Deponent made a statement, in writing, of the points relied upon by the counsel of Mr. Randel during the argument before the jury, and Mr. Brown made several copies of that. Mr. Randel had other clerks engaged in writing for him during the trial, and deponent thinks they were all faithful and attentive to their duties; among these deponent remembers Mr. Campbell, Mr. Ritchie, and Mr. Janvier. Deponent remembers that, in March, 1833, Mr. Brown came to Washington to see this deponent, and offered to act as clerk, or amanuensis, for this deponent, in drawing up replications to the new or amended pleas then lately filed by the counsel for the canal company, in the said suit of John Randel, jr., against the said company. Deponent thinks that Mr. Brown brought along with him to Washington city a copy of the amended pleas; but of this he is not certain, though such is his strong impression. Mr. Brown then manifested the greatest anxiety and interest for Mr. Randel. Mr. Brown hastened this deponent's return to Delaware, to prevent judgment being taken by default against the said Randel, for want of the replication to the amended pleas, at the time the navigation was obstructed, and the roads were bad; but said Brown urged this deponent to return, until he succeeded in his object. On our way to Baltimore the stage was upset, and the said Brown was hurt; but we arrived at New Castle, deponent thinks, on the day on which the rule to file the replications to the amended pleas expired. And further, in answer to this interrogatory, deponent saith nothing.

In answer to the fourth interrogatory, the said John M. Clayton answers and says: that he refers to his preceding answer to the third interrogatory, and further says, that he does not know what compensation Mr. Brown was to receive, nor what compensation Mr. Campbell, Mr. Ritchie, or Mr. Janvier, or any other person engaged to write for Mr. Randel was to receive, from the complainant. And further in answer to this interrogatory, deponent saith nothing.

In answer to the fifth interrogatory, the deponent answers and says: that he refers to his answer to the third interrogatory, and further says, that he does not remember at whose request Mr. Brown,

the respondent, visited Washington city, in March, 1833, as beforementioned. Deponent cannot say that he ever did know. Deponent thinks Mr. Brown was then at Washington about ten days. Deponent does not know that Mr. Brown had other business at Washington; he might have had other business, and deponent might not have known it. Deponent cannot say that it was actually necessary that Mr. Brown should have come to Washington city, but deponent refers to his answer to the third interrogatory. And further in answer to this interrogatory, deponent saith nothing.

In answer to the sixth interrogatory, the deponent answers and says: that he has no recollection of any interrogatories in the suit of said Randel against the said canal company, being prepared by Mr. Brown; but this deponent does not know that the said Brown did not prepare any interrogatories.

In answer to the seventh interrogatory, deponent answers and says: that the respondent, Mr. Brown, did not perform any duties at any time within deponent's knowledge, except those of a clerk or messenger; but deponent adds, that Mr. Brown always appeared to be on most intimate terms with Mr. Randel, and as his friend, he often advised him. Mr. Brown on all occasions, and in all companies, so far as deponent knows, or has heard, defended his friend, Mr. Randel, during the progress of his suit with the canal company, and did all in his power to stimulate said Randel's counsel, especially by this deponent in the prosecution of said suit; and further in answer to this interrogatory deponent saith nothing.

To the eighth interrogatory deponent answers and says: that the respondent did, some time after the settlement of the said case with the said canal company, make a claim, deponent thinks upon himself, for compensation or reward for services rendered in the said suit. Deponent supposes that he must have mentioned this claim to Mr. Randel, the complainant. Mr. Brown had more than once spoken to deponent about his compensation, and urged this deponent to intercede for him with the complainant on that subject; and deponent thinks, that deponent once, if not oftener, told Mr. Brown that he would attend to the subject of his compensation, and use his influence with Mr. Randel to procure some compensation for him; or to see, so far as was in deponent's power, that he should receive such compensation. Deponent did make application to Mr. Randel in behalf of Mr. Brown on several occasions. This deponent thinks, that Mr. Brown's claim upon the counsel of the complainant was made upon this deponent in the form of a letter; but if so, deponent has lost or mislaid the said letter. Deponent cannot speak with confidence as to the contents of Mr. Brown's said letter; but he thinks it contained a claim of a present due to him from the counsel in the said suit of John Randel, jr., against the said canal company, for services rendered in addition

to his compensation due to him from Mr. Randel himself. And further, in answer to this interrogatory, deponent saith nothing.

To the ninth interrogatory, the deponent answers and says: that Mr. Brown did complain of his poverty. Deponent does remember one occasion—on his return from Washington city in March, 1833, when he loaned Mr. Brown a small sum of money, but deponent does not consider Mr. Brown indebted to him for the said sum of money. And further, in answer to this interrogatory, deponent saith nothing.

To the tenth and last interrogatory, the deponent answers and says: that he does not recollect any other matter or thing that may be of any use to the complainant.

JOHN M. CLAYTON.

Sworn, and subscribed, the 7th day of April, 1838, before
H. M. RIDGELY, *Com.*

The answers of the said John M. Clayton, esquire, to the cross interrogatories in this case filed by the respondent.

In answer to the first cross interrogatory, this deponent says: that he refers to his aforesaid answers to the second and third interrogatories filed on behalf of the complainant; and further to this cross interrogatory he saith nothing.

In answer to the second cross interrogatory, the deponent answers and says: that he has heard the said John Randel express a grateful sense of the friendly services rendered him by the respondent in his said suit with the said canal company. Deponent thinks that he has heard Randel say, that he intended to make a present to Mr. Brown, who appeared to be a favorite with him. Deponent has heard said Randel say that he did not owe Mr. Brown, but deponent's recollection is too indistinct to say whether it was before or after the commencement of this present suit between them. Said Randel never denied in deponent's presence that he was to pay the said Brown for his services, or pretended that said services were gratuitously rendered. Whether said Randel has, or has not, paid said Brown for his services, deponent does not know. And further in answer to this interrogatory deponent saith nothing.

To the third cross interrogatory, the deponent answers and says: that he refers to his answers to the interrogatories on the part of the complainant; and complainant further says, that he has endeavored to fix in his own mind a sum at which to rate the compensation of the said Brown, but in the absence of all the papers which were copied by the said Brown, and as there are not interrogatories pointing deponent's attention to each particular service, which said Brown did render, after so many years in the absence of sufficient data, deponent is fearful of doing injustice to one of the parties, should he attempt to make an estimate of said compensation. And further, in answer to this cross interrogatory, deponent saith nothing.

To the fourth cross interrogatory, the deponent answers and says: that he refers to his answers to the previous interrogatories and cross interrogatories; and further says nothing.

To the fifth cross interrogatory, the deponent answers and says: that he refers to his answer to the third interrogatory on the part of the complainant, and further says, that the said judgment against the said canal company was not paid in cash, but was settled and arranged during the year 1836, by the delivery to the said Randel or his assignees of certificates of canal debt, having priority of payment and lien over all other debts against the said company, by consent of creditors and stockholders, and under the authority of laws passed for that purpose by the legislatures of Delaware and Maryland. After the judgment of January, 1834, said Randel proceeded by attachment sued out of the court in Delaware to attach the tolls of the said company, and deponent believes said attachments were served on perhaps twelve or fifteen hundred different persons; perhaps more. Deponent does not know how many. Deponent has understood from said Randel, that said Brown assisted him in the service of many of said attachments, and in the business relating thereto. The garnishees contested the validity of said attachments. Cases stated were agreed upon, and drawn up to obtain the opinion of the court; thereupon deponent stated the cases, which were signed by the counsel on both sides, and the questions raised by them were reserved to be heard and decided before all the judges of the State of Delaware in bank. Deponent did attend the superior court at New Castle, in the spring of 1835, to argue in behalf of the complainant these attachment cases, and deponent is under the impression that respondent was there at that time, and copied said cases stated, and transcribed whatever was necessary to be transcribed on that occasion for the complainant. The cases stated were two in number. All the other cases were to abide the event of their determination. These cases were argued at the June term of the court of errors and appeals of the State of Delaware in the year 1835, at Dover, and deponent assisted in that argument. Said Brown attended the court during that argument; made copies of the points reserved for each of the judges; and deponent thinks that he made some additional copies of the cases stated for Mr. Randel. Said Brown labored faithfully for the complainant at that time, in every thing which deponent requested him to do. These attachment cases were finally decided in favor of Mr. Randel by the court in Delaware; and writs of error from the Supreme Court of the United States to the court in Delaware, having been sued out by the company, said writs of error, after argument in the Supreme Court of the United States, were dismissed. Thus, the right of the said Randel to attach the tolls of the said company was established. Suits in the courts of chancery of the States of Delaware and Maryland were also instituted for the purpose of estab-

lishing said Randel's priority over all other creditors; of setting aside the loans which had been made to the said company, and of collecting the nett profits of the said canal for the benefit of the said Randel. These suits were rapidly proceeding to decrees, and the chancellor of Maryland had actually made an interlocutory decree in favor of the said Randel. At this stage of the proceedings, the said canal company found that further resistance would be fruitless to them, and after much consultation between a committee of the directors of the said company and the said John Randel and his counsel, an arrangement or settlement was agreed upon at Washington city, deponent thinks, in March, 1836. Deponent does not remember that Mr. Brown was present, or had any thing to do with that settlement; but afterwards that arrangement was altered in the spring of the same year at Philadelphia; to which city deponent went with Mr. Randel for that purpose. The arrangement was then made, which was afterwards established by law, and which deponent has stated before. It was made by deponent, in behalf of Mr. Randel, and by a committee on the part of the directors of said company and their counsel. Deponent does not know whether the contract on that occasion was copied by Mr. Brown or not. Mr. Brown was, on that occasion, frequently in the company of Mr. Randel, and this deponent. Deponent had difficulty in persuading Mr. Randel to agree to that arrangement. Mr. Brown did what he could in assisting this deponent to persuade Mr. Randel to agree to it. Deponent's recollection of the other matters in this cross interrogatory, and also in the sixth and seventh interrogatories on the part of the respondent, is too indistinct to enable him at this time to answer farther than he has already done.

In answer to the sixth and seventh cross interrogatories, deponent refers to his answers to the preceding interrogatories and cross interrogatories.

To the eighth cross interrogatory, the deponent answers and says: that he refers to his answers to the preceding interrogatories and cross interrogatories, but more especially to his answers to the second and third interrogatories on the part of the complainant, and further answers: that said Brown did often travel from his home in Philadelphia, to meet this deponent on the business of the complainant. On these occasions he came to Dover and New Castle, and once to Washington city, as before stated. Deponent has endeavored to enumerate in his preceding answers, the instances when said Brown so met him, but there may have been some instances of the kind which may have escaped deponent's recollection. Deponent has often received letters and documents from the respondent, relating to the business of the complainant, and has often written to the respondent on the business of the complainant, requesting information. Deponent considered said Brown as a clerk, and as a confidential friend and assistant of Mr. Randel; but cannot say he

knows Mr. Brown to have been a general agent of Mr. Randel; he knows Mr. Brown was employed as an agent, in particular instances, for Mr. Randel, touching the business of his law suit with said company; of other matters not connected with that law suit, deponent does not intend to speak, for his knowledge does not extend to them. This deponent corresponded also with all others, who, as he believed, could assist him with information favorable to said Randel's suit; and further, in answer to this cross interrogatory, deponent says nothing.

In answer to the ninth cross interrogatory, deponent refers to his answers to the eighth and ninth interrogatories on the part of the complainant, and further answers: that he has heard said Brown say frequently, that he was in want of money, and further, that he would not have sought to enforce his claims upon complainant for his services, if he were in independent pecuniary circumstances. Deponent never saw complainant make any payment of any sum to respondent, of which he has at present any recollection; and further, in answer to this cross interrogatory, deponent saith nothing.

To the tenth cross interrogatory, deponent answers and says: that he did endeavor, after the settlement between the canal company and the complainant, to obtain a settlement between the complainant and his counsel in Baltimore, Mr. Scott, for professional services rendered by said counsel to complainant. There was a considerable difficulty between the complainant and his said counsel in making a settlement in respect to the amount of the fee, and the counsel in Baltimore did complain of the complainant. Deponent cannot say how far his intercession may have been effectual in making a settlement between the complainant and the said counsel; but, he believes, the controversy has been settled. The said Randel has paid to his counsel for fees in his said suits with the said canal company, sums amounting to nearly forty thousand dollars or thereabouts; and there are now two suits pending against him in the superior court of the State of Delaware, for fees claimed by counsel for professional services in the said suits with the said canal company, in which two said suits for counsel fees against the said Randel, the question is, as to the amount of fees to be paid to the said counsel; and in further answer to this cross interrogatory, deponent saith nothing.

And in answer to the eleventh and last cross interrogatory, the deponent says: that he recollects of no matter or thing at this time which may be of advantage to the respondent, but he thinks it due to the respondent to state, if he has not already done so sufficiently, that in all the business done by the respondent for the complainant, by or under the direction of the deponent, or within his knowledge, the respondent was an intelligent, faithful, warm, and zealous friend and assistant of the complainant.

JNO. M. CLAYTON.

Sworn and subscribed, the 7th day of April, 1838.
Before H. M. RIDGELY,
Commissioner.

In the Superior Court of the State of Delaware, in and for New Castle county, of the May term, 1829. *Late Court of Common Pleas.*

J. M. Clayton, Read, Rogers.

JOHN RANDEL, JUNIOR,
vs.
THE CHESAPEAKE AND DELAWARE CANAL CO. } J. A. B.

Alias Summons, covenant.

1834. Judgment on inquisition returned by a jury in open court, for the sum of $204,716 $\frac{36}{100}$. Damages sustained by the plaintiff on occasion of the breach of covenant, in the seventh count of the declaration, and for $500 00 costs, and judgment upon verdict of a jury in favor of the plaintiff for the further sum of $21,669 $\frac{48}{100}$, with six cents costs, besides the costs expended.

Extract from the record of the judgment.

January 27, 1834, $10,000 00, with interest from the date, assigned to the use of Samuel H. Hodson, Esq., cashier of the Bank of Smyrna, trustee.

October 31, 1836. The sum of $8,000 00, (being part of the above sum of $10,000 00, with the interest thereof, for the use of Thomas Stockton, as per orders of S. H. Hodson, now filed.

Attest: C. D. BLANEY, *Prothonotary.*

November 4th, 1836. For value received, I do hereby assign, transfer, and set over, unto John Randel, Jr., the sum of $8,000 00, with the interest thereof, which was endorsed as above for my use, on the 31st of October, 1836, at his own risk.

THOMAS STOCKTON.

Attest: C. D. BLANEY, *Prothonotary.*

Extract.

September 19th, 1834. The sum of two thousand dollars, with the interest due, and to become due thereon, being one-fifth part of the sum which was endorsed for use of Samuel H. Hodson, Esq., in "trust for use of William Linn Brown, (see order filed among papers in this case.")

October 22, 1836. I do hereby re-assign, and transfer back to John Randel, Jr., the above sum of $2,000 00, with interest.

"WM. LINN BROWN."

Before C. D. BLANEY, *Prothonotary.*

Copy of the orders noted on the record, and filed in this cause.

JOHN RANDEL, JR.,
vs.
THE CHESAPEAKE AND DELAWARE CANAL CO.

SIR: You are hereby directed to endorse upon record of above suit, for the use of Thomas Stockton, the sum of two thousand dollars, with the interest, due and to become due thereon, being one-fifth part of the sum which was endorsed for my use, in trust by the said plaintiff, on the 27th day of January, 1834.

Witness my hand and seal, at Smyrna, this 18th day of September, 1834.

S. H. HODSON, [L. S.]

Signed and sealed in the presence of
J. GINN,
A. MCCLYMENT.

To CORNELIUS D. BLANEY, Esq., Prothonotary of the Superior Court, New Castle County.

JOHN RANDEL, JR.,
vs.
THE CHESAPEAKE AND DELAWARE CANAL COMPANY.

SIR: You are hereby directed to endorse upon the record of the above suit, for the use of Thomas Stockton, the sum of two thousand dollars, with the interest due and to become due thereon, being one-fifth part of the sum which was endorsed for my use, in trust, by the said plaintiff, on the 27th day of January, 1834.

Witness my hand and seal, at Smyrna, this eighteenth day of September, 1834.

S. H. HODSON, [L. S.]

Signed and sealed in the presence of
J. GINN,
A. MCCLYMENT.

To CORNELIUS D. BLANEY, Esq., Prothonotary of the Superior Court, New Castle County.

JOHN RANDEL, JR.,
vs.
THE CHESAPEAKE AND DELAWARE CANAL COMPANY.

SIR: You are hereby directed to endorse upon the record of the above suit, for the use of Thomas Stockton, the sum of two thousand dollars, with the interest due and to become due thereon, being one-fifth part of the sum which was endorsed for my use, in trust, by the said plaintiff, on the 27th day of January, 1834.

Witness my hand and seal, at Smyrna, this 18th day of September, 1834.

S. H. HODSON, [L. S.]

Signed and sealed in the presence of
J. GINN,
A. MCCLYMENT.

To CORNELIUS D. BLANEY, Esq., Prothonotary of the Superior Court, New Castle County.

JOHN RANDEL, JR.,
vs.
THE CHESAPEAKE AND DELAWARE CANAL COMPANY.

SIR: You are hereby directed to endorse upon the record of the above suit, for the use of Thomas Stockton, the sum of two thousand dollars, with the interest due and to become due thereon, being one-fifth part of the sum which was endorsed for my use, in trust, by the said plaintiff, on the 27th day of January, 1834.

Witness my hand and seal, at Smyrna, this 18th day of September, 1834.

S. H. HODSON, [L. S.]

Signed and sealed in the presence of
J. GINN,
A. MCCLYMENT.

To CORNELIUS D. BLANEY, Esq., Prothonotary of the Superior Court, New Castle County.

JOHN RANDEL, JR.,
vs.
THE CHESAPEAKE AND DELAWARE CANAL COMPANY.

SIR: You are hereby directed to endorse upon the record of the above suit, for the use of William Linn Brown, the sum of two thousand dollars, with the interest due and to become due thereon, being one-fifth part of the sum which was endorsed for my use, in trust, by the said plaintiff, on the 27th day of January, 1834.

Witness my hand and seal, at Smyrna, this 18th day of September, 1834.

S. H. HODSON, [L. S.]

Signed and sealed in the presence of
J. GINN,
A. MCCLYMENT.

To CORNELIUS D. BLANEY, Esq., Prothonotary of the Superior Court, New Castle County.

NEW CASTLE COUNTY, *ss:*

I, James C. Mansfield, Prothonotary of the Superior Court of the State of Delaware, in and for New Castle County, do hereby certify that the preceding five pages contain extracts truly made from the record of the said stated judgment, and copies truly made of the

orders connected and filed in relation to said extracts, as the same now remain in my office.

In testimony whereof, I have hereunto set my hand, and [L. S.] affixed the seal of the said superior court, at New Castle, this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

JAMES C. MANSFIELD, *Proth'y.*

Prothonotary paid $1 50.

Deposition of O. K. Barrell.

Oliver K. Barrell, of the town of New Castle, in the State of Delaware, of competent age, being duly sworn according to law, deposes and says—being examined by J. R. Tyson for respondent:

That the paper hereto attached, signed by the prothonotary of the Superior Court of the State of Delaware, in and for New Castle county, and having the seal of said court, contains the whole record in the case of John Randel, jr. vs. The Chesapeake and Delaware Canal Company, of May term, 1829, No. 25, of said court. So far as relates to William Linn Brown and Thomas Stockton, deponent examined the said record, and compared the same with the said paper hereto attached, and knows the said copy to be a true copy thereof, and that James C. Mansfield is the prothonotary of said court, and that the name subscribed to the said paper, and the whole contents thereof, are the handwriting of the said James C. Mansfield, and that the seal affixed is the true and proper seal of said court.

Deponent further says, that, from an examination of the said record, he is able to say that the said paper is a complete copy of the whole record of judgment, so far as the same relates to or is connected with William Linn Brown or Thomas Stockton aforesaid.

Cross examined for the complainant, subject to protest and objection to the whole examination in chief.

I am not the prothonotary or clerk, nor am I in his office. I am a clerk in the office of the Register of Wills of New Castle county. I examined this record by request of defendant. There is a great deal more of the record than appears by the annexed certificate.

Re-examined by Mr. Tyson.

The paper attached was compared with the record in the case by deponent, in the presence, and with the assistance, of Mr. Mansfield, the prothonotary. Mr. Mansfield said he would resist the process of the court if he was sent for, as he could not leave his office. The county court will be held on Monday next. I know he is very busy, and has no clerk in the office with him. Mr. Brown wished me to come and prove the record.

Agreed that this deposition is taken, subject to all exception to which any part of it may be liable, and that such objection may be made when the deposition is offered to be read in evidence.

OLIVER K. BARRELL.

C. INGERSOLL, *for Complainant.*
J. R. TYSON, *for Respondent.*

April 29, 1839.

Sworn in open circuit court, April 29, 1839.

FRA. HOPKINSON,
Clerk Circuit Court.

William Linn Brown, being duly sworn according to law, deposes and says: that being absent from the city of Philadelphia at the commencement of the hearing in this case, was not present in court when the deposition of Job W. Folwell was offered in evidence by his respondent's counsel. He begs leave to state to the court his reasons for withholding the name of the witness to be examined under his commission, when applied for by the opposite party: that the complainant in this case had, before the issuing of the said commission, resorted to corrupt means to influence witnesses; that a certain R. V. De Witt having been previously examined as a witness for complainant, his deposition had been shown or communicated to witnesses, as they informed deponent, by the said complainant previous to their being examined, namely, to Andrew C. Gray, John M. Clayton, and, as deponent verily believes, to others; that the complainant had, on several occasions, as shown by the evidence in this case, attempted to influence the testimony of witnesses by payments for debts at or just before the period of their examination, namely, to C. D. Blaney and Elihu Jefferson—to the latter, previous to his examination the second time; and it is also shown, that a letter was written to John Telfair, containing the offer of money due to him by complainant, inviting him, the said Telfair, who resided in New York, to go with complainant to Albany, or meet him there at the house of the said R. V. De Witt, when, at that time, complainant's commission to the city of New York, and the deponent's cross interrogatories, were prepared, for the purpose of taking the testimony of the said Telfair, and filed and ready to be issued.

That the deponent had given in evidence, in this cause, thirty-four documents and letters, which were counted by the examiner and so certified; that, before the filing thereof, the complainant being in the examiner's office, and having the said documents to look over, the examiner had occasion to leave his office to go into an adjoining room, and left the complainant and documents there. Before filing the said papers, the examiner discovered that *there were but thirty-three papers in number*, and so certified the same;

the missing paper, deponent firmly believes, was abstracted by the complainant.

The witnesses deponent intended to examine, under the said commission to Boston, were two, one of whom was the said Job B. Folwell, though he was by no means certain that the person named would be there at the time of the execution of the commission. Previous to his examination, the name of the witness was mentioned at the office of the examiner, and great exertions were made to get him before the examiner; but, for want of time and opportunity, he being at the time but on a visit to this city, it could not be effected. The complainant, on the next or following day, actually saw the witness on board a boat at the wharf, and spoke to him about a settlement with him for what he owed him. Witness being also a creditor of the complainant, complainant wanted witness to tell him what the deponent wished him to testify to; and the said Job B. Folwell being, as deponent thinks, a timid man, and unwilling to testify, deponent did not detain him in the city for a subsequent examination before the examiner, being apprehensive that, by threats or some other mode of intimidation, or by the exercise of some undue influence on the part of the said complainant, the witness might be prevented from testifying to the facts which he had a knowledge of, if at all.

If the opposite party had offered to come under a rule not to see or influence the witness, the deponent would cheerfully have named him, but he firmly believes, from the fact before stated, that the complainant had reason to suppose that a part of the interrogatories were framed for the examination of the said Folwell, and might readily have prepared the requisite cross interrogatories.

WM. LINN BROWN.

Sworn in open circuit court, April 29, 1839.

FRA. HOPKINSON,
Clerk Circuit Court.

RANDEL, vs. BROWN.

Ordered, That this case be referred to John M. Scott, Thomas J. Wharton, and Peter McCall, esquires, who are hereby appointed and authorized to act as masters therein, with power to administer oaths to the parties and witnesses who may be produced, to examine the witnesses viva voce, or to take their depositions as they may deem proper; also, to direct rules to be entered by the clerk of this court for taking the depositions of witnesses, on such notice, at such times and places, and before such officers, as they may direct; and like rule for commissions to issue for the examination of witnesses on interrogatories, on such terms as may by them be prescribed; which rules shall have the same effect as if made by this court on

special motion. Depositions heretofore legally taken under rule or commission, and the examinations of witnesses reduced to writing by the examiner heretofore appointed, may be admitted in evidence, without any further rule or examination; or at the discretion of the said masters, the witnesses may be re-examined in such manner, and at such time and place, as may be directed; and the said masters shall also have power to limit the time within which the evidence in the cause shall be taken and the exhibits of the parties presented to them, and to meet and adjourn, from time to time, at their discretion.

It is further ordered, that all the evidence taken in the cause be reported to the court, together with a statement by the said masters, or a majority of them, of such facts as, in their opinion, are established by the evidence, together with their opinion touching any matters or question which they may deem material for consideration; and especially, 1st, to report the terms, consideration, and conditions of the transfer of the two certificates of debt referred to in the bill and answer, on the consideration of which the answer of the defendant, so far as it is responsive to the averments of the bill or interrogatories, or a denial of the former, is to be taken as evidence in the cause according to the rules of equity; 2d, to report what sums of money have been paid by the plaintiff to defendant, for or on account of disbursements made by defendant's time, labor expended, or services rendered for or to the plaintiff, for his use or at his request; whether any sum is yet due to defendant therefor, and to what amount.

JOHN RANDEL, Jr.,
vs.
WILLIAM LINN BROWN. } In Equity, C. C.

Interrogatories for witnesses who may be produced, sworn, and examined, on the part of the complainant, under a commission to be issued to Dover, in the State of Delaware:

1. Do you know the parties aforenamed; and how long have you known them, or either, and which of them?

2. Did, or did not, the complainant resort to corrupt means; and, if so, what means, to influence you as a witness in this cause? Did he show, or communicate to you, and, if so, when, where, and under what circumstances, the deposition in this case of Richard Varrick De Witt? Or did you ever, and, if so, when, where, and under what circumstances, inform the defendant that the deposition of Richard Varrick De Witt had been shown to you, or its contents communicated to you prior to your examination as a witness in this cause?

3. Did you hear the defendant examined as a witness for the plaintiff, in an action in Delaware, by James Rogers, against him, the said complainant? When, and before what judges? What

did you hear the defendant testify on that occasion, as to the cause of his quarrel with complainant in September, 1836? Set forth the same particularly.

4. Do you know any thing further material to the complainant? If so, set forth the same fully and at large, as if you were more particularly interrogated in relation thereto.

Commissioners of the complainant, at Dover,
HENRY M. RIDGELY, Esq.,
WILLIAM HUFFINGTON, Esq., or either of them.

JOHN RANDEL, Jr.,
vs.
WILLIAM LINN BROWN.
} April session, 1837.—No. 1.

Circuit Court United States, in Equity.

Cross interrogatories of respondent for John M. Clayton, a witness, who may be produced and examined under complainant's commission to Dover, in the State of Delaware—the respondent objecting to the legality of this commission, and that the second and third interrogatories are leading, and the subject of the second interrogatory irrelevant, proceeds to file cross interrogatories under protestation.

1st. Did not complainant, before your first examination in this case, show to you his bill against respondent, and communicate, or show to you a letter of Richard Varrick De Witt to him? Did you not request of respondent to see his answer to complainant's bill; and did not respondent refuse to show it to you?

2d. If you answer the complainant's third interrogatory in the affirmative, state whether you took full written notes of the testimony given by respondent? If not, state in relation to what parts of his testimony you took notes, and attach the same, or a copy thereof, to your deposition?

3d. In your former deposition in this case, you refer to a written agreement as to compensation between complainant and you; do you now know? and, if aye, state where it is. Can you annex it? If aye, do so; if not, have you searched diligently for it, and do you believe it to be lost, or to have been [destroyed] since you last saw it in the possession or control of complainant? State its contents from recollection, if you are able so to do. What did you receive from complainant in compensation for your services; and when? State particularly. Was it a certificate, or certificates? If aye, of what, and for what amount? Have you the same? Can you annex the same, or copy thereof, to this commission? If aye, do so.

4th. Did you not receive a letter from respondent, upon the subject of the canal mortgages, while you were of counsel for complainant? Did you not so testify, as a witness for the complainant, in the suit of James Rogers against said complainant? If aye, can you say if the copy marked A, dated June 25th, 1835, now shown to

you, is a true copy of the letter then sent from respondent? If you answer affirmatively, annex the said copy, or the original, if in your possession, to your deposition.

5th. Do you [know] any other matter or thing material to defendant? If aye, relate the same at large, as if thereunto particularly interrogated.

Defendant names on his part, as commissioners, Henry M. Ridgely, esquire, one of the commissioners nominated by the complainant, and Martin W. Bates, esquire, both of Dover, or either one of them.

CADWALADER,
Solicitor for Respondent.

Depositions of witnesses produced, sworn or affirmed, and examined, before me, Henry M. Ridgely, the commissioner within named, and appointed by the annexed commission, in a certain action in equity in the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the Third Circuit, wherein John Randel, jun., is complainant, and William Linn Brown is respondent, taken on behalf of the said complainant at the office of the said Henry M. Ridgely, at Dover, on Monday, the thirtieth day of September, in the year of our Lord one thousand eight hundred and thirty-nine.

John M. Clayton, esquire, of the town of Dover, aforesaid, aged forty-three years, or thereabouts, a witness produced, sworn, and examined, on the part and behalf of the said complainant, John Randel, jun., deposes and says, as follows:

To the first interrogatory he answers and says: That he knows the said parties, and has known them for several years; and refers to his answer to a like interrogatory in the former commission in this cause.

In answer to the second interrogatory this deponent answers and says: That the complainant never did resort to corrupt means to influence deponent as a witness in this cause. That this deponent has no recollection that said complainant ever exhibited to him any deposition in this case of Richard Varrick De Witt, nor did deponent ever inform the defendant that the deposition of said De Witt had been shown to him; but deponent says that complainant, either before or after this deponent's former examination in this cause, in the course of conversation, told this deponent that he could or would prove by the said De Witt, that the said defendant had admitted to the said De Witt that the said complainant did not owe the said defendant, or had paid him for his services, or something to that effect. Both the parties in the said cause, the defendant, as well as the complainant, conversed with the deponent on several occasions about the said cause, prior to his first examination as a witness. Each of said parties repeatedly waited on this deponent, and each of them informed this deponent that he was to be exam-

ined as a witness for him. Deponent inclines to think that his conversation with complainant, about De Witt's testimony, was before his first examination, but of this he is not certain. Each party may have told deponent something of what he expected to prove in the above case; and deponent thinks that, in some conversation with the defendant, deponent told defendant that De Witt would prove, or had proved, his admissions to said De Witt. On one occasion the defendant left a copy of his answer in this cause with deponent; this was before deponent's first examination as a witness in this cause. The next day after defendant had left his answer with deponent, defendant called and took it away. And further, in answer to this interrogatory, deponent says nothing.

To the third interrogatory, on the part of the complainant, this deponent answers and says: That he did hear defendant, Brown, examined as a witness in an action in Delaware, by James Rogers against the said complainant John Randel, jun., before the judges of the superior court of the said State of Delaware, at New Castle, at the last May term of that court; that said court was composed of this deponent, chief justice, and the honorable Samuel M. Harrington, and the honorable Cabel S. Layton, associate judges of the said State; the said cause was tried before a jury and the said judges.

Deponent remembers that said defendant, William Linn Brown, was examined as a witness in that cause against the said Randel, in behalf of said Rogers. Defendant was also examined at the same time as a witness against the said Randel, in another cause against the said Randel at the suit of the administrator of George Read, esquire, deceased. Both said suits were suits for counsel fees, and for services rendered as counsel for the said Randel in his suit against the Chesapeake and Delaware Canal Company.

In cross examining the said defendant Brown, as a witness in one or both of said causes, said Randel's counsel asked him, the said defendant Brown, certain questions, with a view to discredit him as a witness; and, among others, whether he had not had a quarrel with the said John Randel, and perhaps in September, 1836. Deponent thinks that said Brown admitted that he had a quarrel with said Randel, and at that time; but the deponent's recollection of his evidence is too indistinct to enable him to relate what said Brown then declared was the cause of said quarrel, or to set forth his testimony particularly. Deponent says that a great many witnesses were examined before that court, at that term, and that a great deal of business was done—the term lasting nearly a month. Amidst the mass of business done, deponent cannot recollect all the testimony of this particular witness, and deponent has preserved no notes of his evidence. The senior associate judge in that county was the reporter of that court, and deponent generally relied on him for notes of the testimony. And further, in answer to this interrogatory, deponent saith nothing.

To the fourth and last interrogatory, on the part of the said complainant, John Randel, junior, this deponent answers and says: that he refers to his former deposition taken in this cause, in which deponent mentioned, that suits for very large sums for counsel fees were then pending in the superior court of the State of Delaware, brought by said Rogers, and by said Reed; since which time, deponent says, that said suits have been tried; the sum recovered by Mr. Reed's administrator, for counsel services due him in the case of Randel against the Chesapeake and Delaware Canal Company, was two thousand dollars; judgment was entered for this amount on the agreement of parties or their counsel assessing that amount. In the said suit of James Rogers against the said John Randel, the sum recovered by the said Rogers on the verdict of a jury, was about twenty-one hundred, or twenty-two hundred dollars, which sum included the amount due to the said Rogers at the time of the verdict for his counsel services in the suits and various controversies between said Randel and the said Chesapeake and Delaware Canal Company, in this State, and other counsel services rendered by the said Rogers to the said Randel in other cases. And further, in answer to this interrogatory, deponent refers to his former deposition in this case, and further saith nothing.

JOHN M. CLAYTON.

Sworn, and subscribed, this 30th September, 1839.

Before H. M. RIDGELY,
Commissioner.

The said John M. Clayton, in answer to the cross interrogatories filed on behalf of the said William Linn Brown, the defendant in this cause, answers and says:

In answer to the first cross interrogatory, the deponent answers and says: that he has no recollection that complainant before deponent's first examination in this case, or at any time since, showed to this deponent said complainant's bill of complaint against respondent. It is possible that said complainant may have communicated, or shown to this deponent, a letter of said De Witt to him; but if so, deponent has lost all recollection of it. Deponent further says, that it is very probable he may have requested of respondent to see his answer to complainant's bill, though of this, he is not certain, and it is certain that respondent did not refuse to show his answer to deponent; on the contrary, said respondent, Brown, did leave his answer in this cause with this deponent, to be read as deponent has heretofore related in this deposition; and further, in answer to this cross interrogatory, deponent saith nothing.

In answer to the second cross interrogatory, deponent refers to his answers to the original interrogatories, and further saith nothing.

In answer to the third cross interrogatory, deponent says: that the written agreement as to compensation between the complainant and

this deponent, for this deponent's services, has been long ago delivered up to said complainant, as he believes. It was drawn and entered into somewhere about the last of December, 1831. Deponent says, that he thinks the precise date of said agreement was 27th of December, 1831. The substance of it deponent believes was, that deponent should take the whole charge of complainants whole suit against the Chesapeake and Delaware Canal Company, prepare the pleadings as well as he could, and try the cause through all the courts to which it might go; for which the complainant agreed to pay the deponent ten per centum on the amount recovered, and a thousand dollars of this sum was paid to deponent in cash, as a retaining fee, at the time of entering into the contract.

Deponent further saith, that at some time before the termination of the said controversy between the said complainant and the said company, he gave up to said complainant the said written agreement. Deponent performed all the services required by the agreement, and a great many more, having been for some four or five years generally engaged as counsel in the service of the said Randel, for all of which deponent received, some time in the latter part of the year 1836, a certificate of the Chesapeake and Delaware Canal Company, for the sum of twenty-eight thousand dollars. Deponent further says, that by agreement or understanding between [him] and the said Randel, said Randel was bound to employ such assistants as deponent should prefer, and especially such counsel as he should choose, as deponent understood it; and further deponent says, that the said Brown, the respondent, did writing under the dictation of this deponent as a clerk or amanuensis, as this deponent has related in his former deposition in this cause. But this deponent says, that said Brown, the respondent, was not of counsel for the said John Randel, and deponent never supposed, that he, the said Brown, nor any body else, ever considered him as counsel; he had not the requisite skill, experience, or learning, to entitle him to such a character. Deponent is in possession of a draught purporting to be a copy of his contract with said Randel, but deponent has never compared it with the original, and cannot therefore say, on his oath, that it is a correct copy. Deponent believes that he has stated said agreement in substance correctly; and further, in answer to this interrogatory, the deponent saith nothing.

In answer to the fourth cross interrogatory on the part of the respondent, deponent says: he has no recollection of having received from said Brown the letter, an alleged copy of which marked with the letter A, and purporting to be dated the 25th of June, 1835, is now exhibited to this deponent at the time of his examination before the commissioner. Deponent may have written to said Brown about the canal mortgages, and requested him as an agent or friend of Mr. Randel's to procure copies of them from the public records of Philadelphia; and deponent sometimes wrote to the said Brown

communicating deponent's thoughts to the said Brown, about the validity of the loans of the Chesapeake and Delaware Canal Company, or to procure law books for the deponent while examining the questions of law relating to the said loans and other matters; but deponent has not preserved the correspondence with said Brown, and has not considered it of sufficient importance to preserve it. Deponent wrote letters to said Brown during the continuance of the said controversy, considering him as the friend of Mr. Randel; and that he, also, received letters from him; but deponent cannot now identify or particularize the copies of letters sent by said Brown to him, nor has deponent ever attempted to do so in giving testimony; and further, in answer to this interrogatory, deponent saith nothing.

To the fifth and last cross interrogatory on the part of the respondent, the deponent answers, that he refers to his former deposition taken in this cause; and further, in answer to this interrogatory, deponent says that he knows nothing.

JOHN M. CLAYTON.

Sworn and subscribed, this 30th September, 1839.
Before H. M. RIDGELY,
Commissioner.

Peter Leslie, a witness produced, affirmed, and examined on behalf of the defendant, deposes and says:

I am the secretary of the Chesapeake and Delaware Canal Company.

I have the transfer book of the Randel funded debt of July 1st, 1836. Transfer No. 3, October 17th, 1836, by John M. Clayton, attorney for Thomas Stockton to John M. Clayton, for $28,000, is turned to by the witness.

The witness refers to the leger of the Chesapeake and Delaware Canal Company, and the transfer book above referred to.

John Randel, jr., has yet in his name, $16,420 of the Randel funded debt. This is subsequent to March 2d, 1839. The transfer made on that day reduced it to that amount. The original amount was $229,820.

In the leger, J. Randel, jr., is credited on the 5th Nov. 1836, by Wm. G. Buckner, $10,000. July 1st, 1837, Wm. G. Buckner, $10,000. February 28th, 1839, by John Ely, jr., $2,000. March 1st, 1839, John Randel, jr., by his attorney David C. Wilson, $1,000, in the aggregate, $23,000 re-transferred to him.

The first transfer was an assignment June 18th, 1836, to Thomas Stockton, $28,000.

The next transfer, September 26th, 1836, to William G. Buckner, $60,000 by letter of attorney.

The next October 24th, 1836, to Wm. Linn Brown, $10,000. The number of the transfer to Brown is No. 4.

Cross examined.

The transfer to William L. Brown is by Wm. Linn Brown, attorney of J. Randel, jr. On the 24th October, 1836, the amount Mr. Randel had was $141,820. This includes the $10,000.

Re-examined.

On the 1st January, 1837, the amount alienated was $155,400. Previously to that he had had $10,000 re-transferred to him. There was at that time standing in his name $84,420. I was subpœned yesterday to attend here by Mr. Brown.

PETER LESLEY.

John Sergeant, of the city of Philadelphia, counsellor at law, a witness produced, sworn, and examined on the part of the defendant, deposes and says:

Mr. Linn Brown came to study law in my office about the time the registry bears date. I knew well his parents. I felt an interest in him from the acquaintance I had had with his parents, and knowledge of them, and of his uncle, a very interesting man, who died young. After some time, how long I can't tell, Mr. Brown began to absent himself from my office, and continued to do so, till finally I saw almost nothing of him. I do not know that I can state any thing more, for I cannot say from recollection that I heard any thing from Mr. Randel as to the cause of his absence, or from Mr. Brown, in the presence of Mr. Randel; and if I could, it would not be proper to state it probably, because Mr. Randel's visits to me were in a professional character chiefly, if not entirely. I don't doubt that Mr. Randel was at my office, during the period Mr. Brown was studying with me. Mr. Randel frequently consulted me about his business in the State of Delaware. It very often happens that a client coming to see me, when I am engaged, sits in the room where my students are, till I am at leisure. Mr. Randel and I had been acquainted for a long time, but I cannot tell when our professional intercourse commenced.

After a great lapse of time, when I can't tell, Mr. Brown called on me to propose his examination for admission. I felt great scruple about moving his admission, and objected to so doing on account of his absences. The objection was afterwards removed, how I don't recollect. He was admitted, I think, on my motion, but after a very long period from the commencement of his studies, probably two or three times the usual period. Mr. Brown came into my office with tolerably mature understanding, capable of transacting business, and very well educated.

I think he was 22 or 23 years of age, when he commenced his studies. He had a manly bearing and manner. I should think that Mr. Brown was qualified to be an auxiliary to such proceedings as Mr. Randel's in Delaware; that he was capable of rendering considerable service in a matter of that sort.

Cross-examined.

I saw Mr. Brown in town sometimes, not very often though, during his absences from my office. I am pretty sure that during the time Mr. Brown did not attend at my office, he came to see me, and talked to me, and asked me questions. Being asked if he had seen Mr. Brown generally during those absences, he says, I can't recollect that. Some time elapsed between the time he applied to me to move his admission, and the time of moving. I was sometimes in doubt as to whether he was continuing in my office, he had been absent so long. Sometimes I thought he had left. When I spoke of the maturity of his understanding, I had not reference to his legal proficiency, but to his age, his education, and the natural strength of his mind. He could be useful under the direction of a professional gentleman having care of the suit in a way, that a gentleman having no acquaintance with the law could not probably be, and that I judge from his conversations at different times with me.

I have stated that I had conversations with him during his absence from my office, and from those I form my opinion, that he was capable of rendering service in that way to Mr. Randel. From my knowledge, except from these conversations, I cannot speak as to his ability to be of service.

Re-examined.

I do not mean to say that all my conversation with Mr. Brown related to Mr. Randel's legal controversy, but they did, for the most part, to matters growing out of that controversy. Sometimes he talked with me, sometimes enquired of me, and wanted my opinion and aid connected with that controversy. I want to add, that I did not very much encourage this, and Mr. Brown may have seen from my manner that I would rather avoid it.

JOHN SERGEANT.

Job R. Tyson, esquire, being examined on behalf of the respondent, on his affirmation deposes and says:

Mr. Camac was examined in Randel vs. Brown as a witness sworn before Judges Baldwin and Hopkinson. I have no doubt that these notes contain what the witness said, in an elliptical form. I believe from looking at these notes, I can give the words of the witness. Mr. Camac is gone to Europe. Being cross examined, he says, I don't recollect that there was any thing else on cross examination. I think I have all the cross examinations there, to the best of my recollection. I recollect this. I objected to the question on cross examination, which was argued and admitted. I think there was but one question. I have no recollection of taking these notes with unusual accuracy. It does not contain every word of

the witness, but there is no word there that was not his. Every significant or important word is there. Looking at the notes and the object of calling him, those words contain the substance, I believe the words of the witness, except elliptical words. He was not under cross examination fifteen minutes. I made those notes at the time, and have no doubt of their accuracy.

Re-examined.

Looking at these notes and refreshing my mind, I believe I am able to give the words of the witness.

Question. Will you undertake to say that you recollect all important as well as unimportant words, except elliptical words?

Answer. It is possible that something may have fallen, that is not there. I am as certain as any thing can be, at such a distance of time, that it contains all important and unimportant. I think I can give all important as well as unimportant.

Mr. Camac was called for the defendant in Randel vs. Brown, and was examined by me in the first instance. I asked him whether Mr. Randel had been indebted to him in the year 1836. He answered affirmatively, and in reply to a question, whether an order drawn by Mr. Randel in his favor on Mr. Brown for $2000, and accepted by Mr. Brown, was paid on the 22d or 24th October, 1836, by Mr. Randel or Mr. Brown; he said it was not paid at that time. That was all that I asked, and that he answered to the best of my recollection and belief. He was going on to say when it was paid, without any question from either side, to state when, and by whom it was paid. I stopped him and said I did not want to hear that. Mr. Ingersoll insisted that it was competent, and I objected. After argument the court admitted the answer. He said that it had been paid by Mr. Randel in July, 1837. That he had attached the stock of Mr. Randel—the Randel debt he meant in the Chesapeake and Delaware Canal, and it was paid a day or two after the attachment. I then showed him the two letters of Mr. De Witt that have been offered here for the purpose of proving the handwriting of Mr. De Witt. I don't recollect whether he proved it, or whether the opposite party admitted it. My recollection is that he proved it. Mr. Camac remained in court after his testimony was concluded. I asked him no further questions, nor the other party. Strictly speaking, there was no cross examination.

No cross examination.

James C. Mansfield, a witness produced, sworn, and examined on the part of the defendant, deposed as follows:

I am prothonotary of the superior court of Delaware for New Castle county.

The records in the case of John Randel, jr., vs. the Chesapeake and Delaware Canal Company are in the office of which I am prothonotary.

The records in that case are voluminous, and blended with the records of other suits in the late court of common pleas. I have not those records here. In the first place, I did not conceive I had any authority, or would be justified in bringing out of the office the records. The suit of Randel vs. the Chesapeake and Delaware Canal Company is in two appearance dockets, the original and the alias. It is also continued in two continuance dockets. In the same dockets there a number of other suits, not terminated. That part of it which relates to the amount of judgment ultimately rendered, is in two dockets.

One of the entries is in a judgment docket, which contains all the entries of four terms, if not of five. On that record are all the assignments and re-assignments that have taken place in reference to the verdicts of Randel vs. the Chesapeake and Delaware Canal Company.

I called on the Attorney General, Mr. Gilpin, and Mr. Clayton, who informed me I could not be justified in bringing the records or any part of them from the office.

I acknowledge the service of the subpœna, and the tender of the fee.

The amount of the verdict was $226,000 and some costs. The costs I don't recollect.

William Kinsey, a witness produced, affirmed, and examined on the part of the defendant, deposes and says:

I am acquainted with the general character of Job W. Folwell for truth. It stands good for any [thing] I know. So far as respects myself, or as I have heard others, I never knew his word doubted. I have dealt with him more than twelve years myself. I would believe him on his oath.

Cross examined.

He lived in this city, when I first knew him. My residence is in Frankford, this county. My dealings with him were in selling him leather. His business was boot and shoe making. He had a boot and shoe shop in this city in Front street for some years. My intercourse with him was very much that of manufacturer and customer. I did not associate with him more than as a man of business. I apprehend my associates were not very much his associates. They might have been some. He and I did not move in the same class. I have heard him spoken of as a very upright, competent man to manage business; and he has been employed as foreman to whom business might be confided. These conversations I have spoken of, are with reference to his employment in business. I have heard him spoken of as a very upright and respectable man, and never heard the contrary. I don't know that I can name the individuals whom I have heard so speak of him.

WM. KINSEY.

Robert R. Levicke, a witness produced, sworn, and examined on the part of the defendant, deposes and says:

I have known Job W. Folwell since 1826. Have dealt with him a great deal—bought of him. I have always considered him an honest and correct man, whose word would be taken as soon as that of any other man in the community.

I would take his word for truth. I would believe him on his oath. I never heard any person speak against him for truth or veracity. I have heard persons speak of him.

ROBERT R. LEVICK.

Isaac W. Norris, of the Northern Liberties, a witness produced, affirmed, and examined, on the part of the defendant, deposes and says:

I reside in the Northern Liberties. I know Capt. Samuel Sutton. He has transacted business at my store for three, four, or five years past. His general character for truth is good; I never heard it called in question. I think I would believe him on his oath, without hesitation.

Witness adds, I am content to say I would believe him on his oath, without hesitation.

Cross examined.

He has been master of a vessel when he transacted business at my store; of a schooner trading coastwise. I understand he now keeps tavern. He was not very frequently in my store—sometimes when he supplied his vessel with ship chandlery. He was not the owner of the schooner. Mr. Ridgway was the owner of one of the vessels. I don't know of his ever owning a vessel himself. I never met him out of my store; never had any acquaintance with him, except that formed in my store. I never have moved in the same circle of life with Captain Sutton. My business throws me a good deal with captains of vessels. I don't recollect ever hearing his character spoken of. I know nothing particular of Captain Sutton or his character. From my intercourse with him, which was of a business character, I believe him a respectable man, and that is the limit of my means of knowledge about him.

I. W. NORRIS.

William E. Bladen, of the county of Philadelphia, biscuit baker, a witness produced, sworn, and examined, on the part of the defendant, deposes and says:

I have known Captain Samuel Sutton something like twelve years, and in all that time I never heard aught against his character. I think I know a number of persons who are acquainted with him. In all the conversations I have had with them, I never heard any thing derogatory of him. I would believe him on his oath.

Cross examined.

I am a biscuit baker by profession. My knowledge of him has not been derived from his calling on me for stores for his vessel; I have known him from a boy, but more particularly for the last ten or twelve years. Since he has been in business, he buys crackers at my factory. That business is of a tavern keeper; he keeps tavern at the southeast corner of Third and Green streets. I have met him occasionally, when he was captain of a vessel, before his going into the business of tavern keeping. My sphere of acquaintance is a different one from Captain Sutton's. I have never heard his character directly the subject of conversation, one way or the other.

Re-examined.

I have heard Captain Sutton spoken of frequently. In these conversations I never heard aught against his character for truth.

WM. E. BLADEN.

Thomas Booth Roberts, a witness produced, sworn, and examined, on the part of the complainant, deposes and says as follows:

I have been examined in this case before. I am clerk of the city council of the city of Wilmington, and clerk of the mayor's and city courts of that city, and clerk of the circuit and district courts of the United States for the district of Delaware. I am also commissioner for taking acknowledgments of deeds, &c., in Delaware, for the State of Pennsylvania, under the present governor. I remember accompanying Mr. Brown, and a constable whose name I did not know till afterwards, to the Moyamensing prison. It was in December, 1836.

Question. Do you recollect, after arriving at the prison on that occasion, calling back the constable, and telling him to tell Mr. Brown that you were a witness for him in Randel vs. Brown, and that for his (Mr. Brown's) treatment of you in the case in which the execution had issued, and allowing you to go to prison, you would fix him for it in your evidence before the court.

Answer. I have no recollection of having so stated, and am confident I did not say so to the constable, as the constable left me before Mr. Brown did.

The prior facts, stated by the constable in his deposition, are generally incorrect, as to denial of name, &c. Nothing like what I have been questioned upon took place at the prison. When the constable, Mr. Brown, and myself, arrived at the prison, we went into the room where the keeper was, when the constable surrendered me. I looked on Mr. Brown as my friend, and conversed with him as such while there—urging him, as he declined entering bail for me, to obtain bail, or to make an arrangement with the

plaintiffs for my release, as I was anxious to return to Delaware as soon as possible. When he left me he said he would use his exertions to obtain bail, or would see the plaintiffs and endeavor to make an arrangement with them for my release. I depended entirely on his exertions as my friend, and as a lawyer, to do these things for me, to make these exertions—more particularly as my friend. Mr. Brown, after these conversations, left me. In a short time afterwards, I stated to the keeper of the prison that I wished breakfast, with a request that he would have it got for me in his house, and that I would pay him the expense. While eating breakfast in the room with the family of the keeper, the keeper came in and stated that a gentleman wished to see me. I immediately went into the office of the keeper, where I saw two gentlemen of my acquaintance—one residing in Delaware, the other in this city—both of whom addressed me, and to whom I also spoke. The one who then resided in this city said to me, that he had entered my bail before the alderman, and brought a release for me. I asked him if Mr. Brown had seen him—supposing that Mr. Brown, as my friend, had called on him to enter bail for me. He replied that he had not, but that he had accidentally heard of my arrest, and went immediately to the alderman and entered my bail, without any solicitation.

I paid the costs which had accrued at the prison. These two gentlemen and myself left the prison together; they got into a carriage and rode off, and I proceeded immediately to Mr. Brown's office, in Pine street, on foot. Not finding him there, I left a note upon his table, stating to him that it was unnecessary to use any further exertions for me, as bail had been entered, and I was going to leave the city immediately. My object was to keep Mr. Brown as my friend—not to intimidate him. I state these circumstances to show that I did not make use of this language to the constable, because he had left me before Mr. Brown did.

I don't recollect how long it was that the constable left me before Mr. Brown. When the arrest took place on board the steamboat, the constable asked me if my name was Mr. Booth Roberts, I said it was not—it was Mr. Thomas Booth Roberts. Mr. Brown did not reproach me with not paying a tailor's bill, as we were going up to prison. He considered it bad treatment, and said so, in the tailor to sue me; and asked me how long the debt had been due—wishing to know whether the suit was barred by the act of limitations.

Mr. Brown, at his office in Pine street, did give me a reason for not going my bail. We went to the office in Pine street, on going to prison from the alderman's. He declined going my bail, because he wanted me as a witness in this case against Mr. Randel. There was no coolness between Mr. Brown and myself, on my way to prison. I have no recollection that I shook hands with Mr. Brown at the prison, in the constable's presence.

Cross examined.

The two gentlemen who came down to the prison were Henry Hugg, of this city, and Samuel McMullin, of Delaware.

Re-examined.

I sent no part of the alleged message, by the constable, to Mr. Brown, nor any thing like any part of it. I never sent any message by that constable to Mr. Brown. I sent no message to Mr. Brown that day, except what I communicated by the note which I left at his office.

I did not consider Mr. Brown as, professionally, concerned for me in any way. I understood from Mr. Randel that the constable is now dead.

T. BOOTH ROBERTS.

Cross examined again.

I heard of the constable's deposition, immediately after it had been taken, through Mr. Randel. The subject of it—that is, that the man had given testimony impeaching my character, was then stated. I do not recollect how long after that, I saw a copy of his testimony. It was within six months after his testimony was taken, that I saw a copy of it.

That is my impression of it. I was arrested about 7 o'clock in the morning, and I got away in the 9 or 10 o'clock boat for Salem. I do not recollect the color of the paper upon which I wrote the note to Mr. Brown, whether white, or blue, or yellow. I can't undertake to give the exact words I used in the note. I left it unsealed. I don't recollect whether it was open or closed. It was left near the centre of the office, on his table.

In answer to a question by masters.

After I had read a copy of the constable's testimony, I considered it so unimportant, as not to require me to take the trouble to come up to give counter-testimony. I thought very little of the matter afterwards, as I did not consider it would affect my character for veracity in the least, where I was known. I deem it at this time justice to myself, to state this, holding the situation that I have mentioned, and as my services might some times be wanted by the gentlemen of the bar here; having learnt from Mr. Randel that great use was being made of this testimony to impeach me.

On Wednesday last, it was stated by Mr. Randel to me, that Mr. Ingersoll thought I had better come to Philadelphia to give my statement of the facts as they occurred, which were stated by Lippard in his testimony, as use was made of his testimony to impeach mine. He wished me to go with him to Philadelphia on Wednesday. I stated that it was inconvenient for me to go that day, as I

had business, but if he would ascertain, when he returned to Philadelphia, what use was being made of it from Mr. Ingersoll, I would endeavor to go on Friday, to-day. I went to New Castle yesterday. He sent over to me from Wilmington to-day. On my arrival in Wilmington, Isaac M. Randel, who stated to me what was being done, and I, immediately on reflecting on the injury my character might sustain, came on to-day. I am 28 years of age now. I was not educated a lawyer. I never saw Lippard after I parted with him at the prison; and, in fact, I would not have known him if I had seen him.

In answer to defendant's counsel.

I first heard that the constable was dead on Wednesday last, Mr. Randel mentioned it in a casual remark.

On Wednesday last, I saw in a book where Mr. Randel has the testimony written down, a memorandum in pencil, under the name of Lippard, that he was dead. I have a copy of that deposition with me, an imperfect copy, that I made myself. That is the paper I was looking at, when the counsel objected to my looking at the paper.

T. BOOTH ROBERTS.

Elijah Brown, a witness produced and examined on the part of the defendant, deposes and says:

In the month of December, 1836, and before, and since, I was, and have been, in the habit of being frequently in Mr. Brown's office in Pine street. I recollect the table always having stood in the same place, in the front side of the room, against the wall between the windows.

The office is on the south side of the street. There was no other table in the office, that I have any recollection of, at any time. I have never known the position of the table changed. It extended in breadth two feet six or nine inches towards the south. No part of it was nearer the centre of the room than the distance of 2 feet 6 or 9 inches, while I was in the office. As it meets the eye, I should say it does not at all answer the description of a table near the centre of the room. The length of the table extends from east to west along the wall. The length of the table was four feet six to nine inches, had no leaves to it. It strikes me to be mahogany, it is of mahogany color. I am not sure as to the wood.

ELIJAH BROWN.

Samuel Stevenson, of the Northern Liberties, trader, a witness, produced, sworn, and examined on the part of the defendant, deposes and says:

I reside in the Northern Liberties. I am acquainted, and have been for the last twelve or fourteen years, with Captain Samuel Sutton. I keep a provision store. Mr. Sutton has been in the

habit of commanding a vessel. He has been in the practice of getting his stores of me. May be a year and a half, or two years out of the twelve or fourteen years, I have known him at different periods, he was in the habit of getting stores from me. I have always considered him equal to any of that class of men who dealt in my store. I am acquainted with persons who know him. I have never heard his character for veracity doubted. I have heard him spoken of. I would have no reason to do otherwise than believe him on oath. I would believe him on his oath as much as any man of my knowing.

Cross examined.

I speak of Capt. Sutton entirely from my own knowledge of him, not from rumor. When I say I would believe him on oath, I speak from my knowledge of him, and connection in the way of business. I am not disposed to exclude his general character. He now keeps tavern, and is respected in the neighborhood in which he resides, so far as I know.

SAMUEL STEVENSON.

JOHN RANDEL, Jr.
vs.
WILLIAM LINN BROWN. } In equity.

Circuit Court United States.

Interrogatories for Doctor James N. Sutton, William P. Veach, Samuel Ford, John Ash, John Sutton, jun., and Benjamin Cooper, witnesses, to be examined on the part of the complainant at St. George's, Delaware, under a commission to be issued thither.

Interrogatory 1st. Do you know Job W. Folwell? How long have you known him? At what places, and in what occupations? Do you know his general character for veracity? Is the same good or bad? From your knowledge thereof, would you believe him on his oath?

Interrogatory 2d. Do you know Samuel Sutton? How long have you known him? And in what places? And in what occupations? Do you know his general character for veracity? Is the same good or bad? From your knowledge thereof, would you believe him upon his oath?

Interrogatory 3d. Do you know any thing further which may be material to the complainant? If aye, set forth the same fully and at large, as if more particularly interrogated in relation thereto.

Interrogatories for Joseph Lafferty and Thomas Janvier, junior, witnesses, to be examined on the part of the complainant, at St. George's, Delaware, under a commission to be issued thither.

Interrogatory 1st. Do you know the parties above named, or either of them; and how long you have known them, or either of them?

Interrogatory 2d. Do you know, and if so, by what means, if any, and what payments of money by the said John Randel, junior, or by Mrs. Letitia Randel, his wife, or any other person on his account, to the said William Linn Brown? If aye, when and why were the said payments made, and by whom, for what services, how often, to what amount? State particularly all your knowledge in the premises?

Interrogatory 3d. Did you ever pay to Mr. Josiah F. Clement a sum of money, taking therefor a receipt in the following words, "Received of William Linn Brown, by the hands of Thomas Janvier, jr., thirty dollars.

J. F. CLEMENT.

PHILADELPHIA, *March* 11, 1833."

If aye, please to state particularly what the transaction was, out of which the said receipt arose? Was any, and what sum, paid in the said transaction to the respondent, Brown? Was the said sum of thirty dollars indeed paid to the said Clement by or for the said Brown? Of what sum was the said thirty dollars part? And whence was derived the sum of which it was part? Was any other part of the said greater part, and what part, paid to the said Brown? What was done with, and what was the balance? Set forth all your knowledge of the premises at large.

Interrogatory 4th. Do you know any thing further which may be material to the plaintiff? If aye, please to set forth the same fully and at large, as if you were more particularly interrogated in relation thereto.

C. INGERSOLL, *for complainant.*

THOMAS MCDOWELL, Esq., *Commission. for the complainant*

October 18, 1839.

JOHN RANDEL, JR. vs. WILLIAM LINN BROWN. } In equity.

Circuit Court United States.

The respondent, objecting to any additional evidence in impeachment of Samuel Sutton before the masters, the evidence on that having been reduced to writing before the hearing in court, and closed, files his cross interrogatories under protestation to the interrogatories by complainant, for Doctor James N. Sutton, William P. Veach, Samuel Ford, John Ash, John Sutton, junior, and Benjamin Cooper, under complainant's commission to St. George's, Delaware.

Cross interrogatory 1st. If you answer any part of the first or second interrogatory in the affirmative, or the last branch of either in the negative, state the names of the persons whom you have heard speak against the veracity of the said Job W. Folwell, or Samuel Sutton, or both, and the occupations and residences of such

persons, and the times and places when and where the same was by them respectively spoken against.

Cross interrogatory 2d. Have you ever been a witness in other causes for complainant? If aye, in what suit or suits? State particularly the names of the causes in which you have testified for and in behalf of the complainant, and the purpose for which your testimony was required in each case.

Cross interrogatory 3d. If you answer affirmatively to any extent the concluding interrogatory of the complainant, be so good as to state, whether each and every fact of those to which you testify occurred in your own presence and hearing. If in your own presence and hearing, when, and where, and in presence of what other person or persons did the same take place? If not in your own presence and hearing, how did you become acquainted with, and how do you now know the fact or facts to which you have testified in answer to the said concluding interrogatory?

The commissioner will please to read over to the witness the answers which he may have given to the said interrogatory.

The respondent objecting to any additional evidence before the masters, of payments by complainant to respondent, as a part of complainant's rebutting evidence, the testimony on that subject having been closed with the evidence in chief; and excepting to the third interrogatory of complainant, as leading and incompetent; proceeds to file cross interrogatories under protestation to interrogatories by complainant for Joseph Lafferty and Thomas Janvier, jr., under his commission to St. George's, Delaware.

Cross interrogatory 1st. If you testify as to any payments by complainant, his wife, or any other person, to defendant, please to state whether you were present at, and saw any one, or more, and which of them made, and the amount of each and every payment or payments so made, with the time and particulars of making the same, and in whose presence, besides your own, the same were made.

Cross interrogatory 2d. If you answer affirmatively, to any extent, the concluding interrogatory of the complainant, be so good as to state whether each and every fact of those to which you testify occurred in your own presence and hearing. If in your own presence and hearing, when, and where, and in presence of what other person or persons did the same take place? If not in your own presence and hearing, how did you become acquainted with, and how do you now know the fact or facts to which you have testified in answer to the said concluding interrogatory?

The commissioners will please read over to the witness the answers he may have given to the said interrogatory.

Lastly. Do you know any other matter or thing that may be useful to defendant? If aye, relate the same as if thereto particularly interrogated?

J. R. TYSON,
Solicitor for respondent.

570
235
610

Commissioners for respondent, James Booth and George B. Rodney, esquires, or either of them. The respondent protesting against the execution of this commission, except in the presence of one or both of the above named commissioners.

Depositions of witnesses produced, sworn or affirmed, and examined, on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, at the house of Samuel Ford, in the village of Saint George, county of New Castle, and State of Delaware, by virtue of a commission issuing from the circuit court of the United States in and for the eastern district of Pennsylvania, in the Third Circuit, directed to Thomas McDowell and George B. Rodney, two of the commissioners, not being of the same nomination named in the said commission, for the examination of witnesses in a certain action in equity depending in the said court, where John Randel, jr., a citizen of the State of Delaware, is the complainant, and William Linn Brown, a citizen of the State of Pennsylvania, is the respondent.

Dr. James N. Sutton, aged forty-one years, or thereabouts, a witness named, being produced, and sworn, and examined, on the part and behalf of the complainant, on the interrogatories directed to be propounded to him, deposeth as follows:

First. To the first interrogatory this deponent answers: That he knows Job W. Folwell; has known him five or six years at Delaware city, as keeper of a tavern; does not know his general character for veracity, or whether the same is good or bad. The deponent, however, is but slightly acquainted with said Folwell, and would have no reason to disbelieve him on oath.

Second. To the second interrogatory, on the part and behalf of the complainant, this deponent answers: That he knows Samuel Sutton; has known him for ten years past, at Saint George's, Delaware city, and Welsh point; he was in the employment of deponent for about two years, as the captain of a vessel and superintendent of workmen. Deponent knows said Samuel Sutton's general character for veracity, and says that the same is very bad; and from his knowledge of him, he would not believe said Sutton upon his oath, especially in a matter where the interest of the said Sutton was at stake.

Third and last. To the third and last interrogatory, on the part of the complainant, this deponent answers: That he knows no other matter or thing that may be material to the complainant in this cause.

JAMES N. SUTTON.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

To the first cross interrogatory to the interrogatories in chief, propounded to this deponent, he answers: That he does not recollect to have heard any persons speak against the veracity of Job W. Folwell; and in regard to Samuel Sutton, he now only recollects Samuel Ford, innkeeper at Saint George's, and George W. Oldham, of Sassafras neck, in the State of Maryland, speak against said Sutton's veracity; the times and places when and where he heard the said Ford and Oldham, he does not recollect.

Second. To the second interrogatory he deposes as follows: That he has been a witness for complainant in the cases of complainant in suits against the Chesapeake and Delaware Canal Company, and also against Benjamin Wright; in the canal case, the deponent was called as a general witness, to prove the amount of his (Randel's) services, work performed, and money expended by him, Randel. In the case against Benjamin Wright the deponent was not examined.

Third. To the third and last cross interrogatory—this deponent not having answered the complainant's concluding interrogatory affirmatively—answers nothing.

JAMES N. SUTTON.

Sworn, and examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

Benjamin Cooper, aged thirty-nine years, or thereabouts, a witness named, being produced, sworn, and examined, on the part and behalf of the complainant, on the interrogatories directed to be propounded to him, deposeth as follows:

First. To the first interrogatory he answers: That he knows Job W. Folwell for five years past, as a tavern keeper at Delaware city; does not know his general character for veracity, whether good or bad; although, from his own knowledge, he would not believe the said Job W. Folwell upon oath.

Second. To the second interrogatory deponent answers: That he had a slight acquaintance with Samuel Sutton, at Delaware city, about four years ago; he was then acting as a deputy sheriff. Deponent does not know his general character for veracity, whether the same is good or bad; and, from his own knowledge, would have no reason to disbelieve him upon oath.

Third. To the third interrogatory, and last, he answers: That he knows no other matter or thing that may be material to the complainant.

B. COOPER.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

To the first cross interrogatory to the interrogatories in chief propounded to this deponent, he answers: That, in regard to Job W. Folwell, the only person he has heard speak against the said Folwell's veracity was William Long, then residing on the Pea Patch, about four years ago. As regards Samuel Sutton, deponent has not heard any person speak of his general character for veracity.

To the second cross interrogatory deponent answers: That he has never been a witness in other causes for the complainant.

Third and last. To the third and last cross interrogatory, he answers, that he knows nothing.

B. COOPER.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

John Sutton, jun., of Saint George's, New Castle county, aged thirty-nine years, or thereabouts, a witness named, being produced, sworn, and examined, on the part and behalf of the complainant, on the interrogatories directed to be propounded to him, deposeth as follows, to wit:

First. To the first interrogatory on the part and behalf of the complainant, he deposeth, as follows: That he knew Job W. Folwell, at Delaware city, as a tavern keeper; for five or six years past has known him; knows his general character for veracity—it is not good; and from deponent's knowledge of the general character for veracity of the said Job W. Folwell, he would not believe him upon his oath.

Second. To the second interrogatory this deponent answers: He knows Samuel Sutton—has known him for thirteen years past; part of that time he lived in the vicinity of Saint George's, as captain of a vessel, and in the employ of John Randel, jr., and Doctor James N. Sutton, and a portion of his time he resided in deponent's family. Deponent has some knowledge of Samuel Sutton's general character for veracity—it is not very good; and from deponent's knowledge of said Sutton's general character for veracity, he would not believe him upon his oath.

Third. To the third and last interrogatory, this deponent answers, that he knows nothing.

JOHN SUTTON, Jr.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

To the first interrogatory, *cross* to the interrogatories in chief propounded to this deponent, he answers: That he has heard Benjamin Cooper, John Ash, John Albertson, and others not now recollected,

speak against the veracity of Job W. Folwell; those conversations were generally had at Delaware city, at different times, whilst Folwell lived at Delaware city, and since that time. Cooper, at that time, was superintendent at Fort Delaware; Albertson, tavern keeper at Delaware city; and Ash was lock-keeper at Saint George's. Deponent further saith that, in regard to Sutton, he has heard the same persons (except Cooper) speak against the veracity of said Sutton; he has also heard Howard Ogle, a justice of the peace, Delaware city, speak against the veracity of Samuel Sutton, and many others not now recollected; the time of this conversation with Ogle is not recollected, but was before and since the said Sutton left the neighborhood.

Second. To the second cross interrogatory he deposeth as follows: That he has been a witness for John Randel, jr. in other causes, namely, in the case of Levinworth against Randel, at Philadelphia, to prove that the plaintiff had not performed his work on the canal agreeably to his contract; he was also a witness in the case of Randel against the Chesapeake and Delaware Canal Company, tried in the State of Delaware. The object of deponent's testimony in that case, was to prove the amount of work done, and value of services of John Randel, jr. to the said company. Deponent was also summoned a witness in the case of Randel against Wright, but was not called.

Third and last. To the third and last cross interrogatory deponent answers nothing.

JOHN SUTTON, Jr.

Sworn, examined, and subscribed, before

THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

William P. Veach, of the town of New Castle, aged forty-six years, or thereabouts, a witness, produced, sworn, and examined, on the part and behalf of the complainant, on the interrogatories directed to be propounded to him, deposeth as follows, to wit:

To the first interrogatory on the part of the complainant he deposeth and saith: that he knows Job W. Folwell, became acquainted with him about ten years ago, at Delaware city, as a tavern keeper, but for several years has had but little knowledge of him. Deponent knows the general character for veracity of said Folwell; it was not very good; from his knowledge of his general character for veracity this deponent would not believe said Folwell on his oath in a matter in which he was interested.

Second. To the second interrogatory on the part of the complainant this deponent answers and says: that he knows Samuel Sutton; he became acquainted with said Sutton about six years ago. Deponent's knowledge of said Sutton did not extend beyond two years.

His residence during that time was at Delaware city, or St. George's, his occupation a shallop-man, and afterwards a deputy for the sheriff in John Randel's attachment cases against the canal company. Deponent knows very little of the general character of said Sutton for veracity; he believes that it was not very good. Deponent could not disbelieve said Sutton upon his oath.

Third. To the third and last interrogatory on the part of the complainant this deponent answers and says: that he knows no other matter material to the complainant in this cause.

WILLIAM P. VEACH.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

To the first cross interrogatory to the interrogatories in chief propounded to this deponent, he answers and says: that the only person he now recollects who has spoken to him against the veracity of Job W. Folwell was Benjamin Cooper, several years ago; said Cooper at that time lived at or near Delaware city, and followed the occupation of a laborer. Deponent has heard other persons speak against Job W. Folwell on account of his want of veracity, but does not now remember the persons or the times and places when and where. Deponent further says, that he has heard Samuel Ford and John Jefferson speak against Samuel Sutton's want of veracity. He does not remember to have heard any other person say any thing in reference to said Sutton's veracity. Samuel Ford was at the time of his speaking of Sutton's want of veracity in the employment of Dr. James N. Sutton, at St. George's, about four or five years ago. John Jefferson, at the time he spoke to deponent in reference to Sutton's want of veracity, was a bar-keeper for his brother, at New Castle, about two or three years ago. The places of the conversations had with Samuel Ford was St. George's and the Red Lion Tavern. His conversation with Jefferson was at New Castle.

Second. To the second cross interrogatory deponent answers and says: that he never was a witness in other causes for the complainant.

Third. To the third and last cross interrogatory deponent answers nothing.

WILLIAM P. VEACH.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

Samuel Ford, of the town of St. George's, aged seventy-eight years, or thereabouts, a witness, produced, sworn, and examined on the part and behalf of the complainant on the interrogatories directed to be propounded to him, deposeth as follows, to wit:

First. To the first interrogatory on the part of the complainant he deposeth and saith: that he knows Job W. Folwell; he became acquainted with said Folwell about six years ago, at Delaware city; said Folwell was then a tavern keeper. Deponent's knowledge of said Folwell extended through a period of about two years; since then deponent has had no knowledge of him. Deponent did not know said Folwell's general character for veracity, nor whether it was good or bad. From his own knowledge of his (Folwell's) general character for veracity, deponent would believe him on his oath.

Second. To the second interrogatory on the part of the complainant, this deponent saith, that he knows Samuel Sutton, and says that he became acquainted with him six years ago or more; said Sutton, at the time of deponent's first acquaintance with him, was a shallop-man, occasionally living at Delaware city and St. George's; that said Sutton was afterwards in the employment of Dr. Sutton, at Welsh point, in Maryland, and subsequently employed by the sheriff of New Castle county in the business of John Randel against the canal company, at Delaware city. Deponent is acquainted with the general character for veracity of the said Samuel Sutton; his general character for veracity is bad; from his knowledge thereof, deponent would not believe said Samuel Sutton on his oath.

Third. To the third interrogatory on the part of the complainant, this deponent answers and says, that he knows no other matter or thing material to the complainant in this cause.

SAMUEL FORD.

Sworn, examined, and subscribed, before

THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

To the first cross interrogatory to the interrogatories in chief propounded to this deponent, he answers and says: that he has never heard any person speak against the general character for veracity of Job W. Folwell. In regard to Samuel Sutton, deponent now recollects to have heard George W. Oldham, of Cecil county, Maryland, a farmer, and Dr. James N. Sutton, of St. George's, speak against the character for veracity of said Samuel Sutton. The only other persons deponent now remembers to have heard speak against Sutton's general character for veracity are, John Ash, of Delaware city, and Henry L. Packard, of St. George's. Packard is a storekeeper at St. George's; deponent's conversation with him was at St. George's, at different times, the particular days not now recollected. Deponent's conversation with John Ash [was] at Delaware and St. George's, at different times, but does not recollect them particularly; Ash is collector of tolls at Delaware city. Deponent's conversations with Mr. Oldham were frequent, at his own house, during the last six years; the last conversation with him was about

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two months ago. Has heard the declarations from Dr. Sutton at different times, at St. George's, but deponent does not now remember the particular occasions.

Second. To the second cross interrogatory, this deponent answers and says: that he was a witness in one other cause for John Randel, in a case before referees at New Castle, between John Randel and Peter Turner. Deponent was in that case called to prove that said Turner had not taken care of said Randel's stock; that is the only other cause in which deponent recollects to have been a witness for complainant.

Third. To the third and last cross interrogatory, deponent not having answered affirmatively to complainant's last direct interrogatory, says nothing.

SAMUEL FORD.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

John Ash, of Delaware city, aged about thirty-nine years, or thereabouts, a witness produced, sworn, and examined on the part and behalf of the complainant, on the interrogatories directed to be propounded to him, deposeth as follows, to wit:

First. To the first interrogatory on the part of the complainant, he deposeth and saith, that he had no acquaintance with Job W. Folwell except by sight, and knows nothing of his general character for veracity, and cannot say whether he would believe him or not upon his oath.

Second. To the second interrogatory on the part of the complainant, deponent answers and says: that he knows Samuel Sutton; deponent first became acquainted with said Sutton in the year eighteen hundred and thirty-one, and had knowledge of him for two or three years afterwards. During the time of deponent's acquaintance with said Sutton, he was a captain of a vessel, passing through the Delaware and Chesapeake Canal to and fro. Deponent is acquainted with the general character for veracity of said Samuel Sutton; his said general character is bad; from this deponent's knowledge thereof, he would not believe said Samuel Sutton on his oath.

Third. To the third and last interrogatory on the part of the complainant, this deponent answers and says: that he knows of no other matter or thing material to the complainant in this cause.

JOHN ASH.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

To the first cross interrogatory to the interrogatories in chief propounded to this deponent, he answers and says: that, having no knowledge of the general character for veracity of Job. W. Folwell, as stated in his answer to the first direct interrogatory, he says, that he has never heard any person say any thing against the said Folwell's character for veracity; that, as to Samuel Sutton, inquired about in the second interrogatory in chief, deponent has heard Samuel Ford, John Wilson, Henry L. Packard, John Sutton, Jr., and other persons whom deponent does not now remember, speak against the character for veracity of said Samuel Sutton; that, at the times of the said conversations with the persons just named, Samuel Ford lived with Dr. Sutton, at St. George's, as his agent; the conversations with him were held in eighteen hundred and thirty-two and three. John Wilson lived at Delaware city, was collector of tolls on the canal, the conversations with him were held about the same time as with Ford; Henry L. Packard resided at St. George's as a storekeeper, conversations with him were at the lock at St. George's, about the same time as the conversations with Wilson, but of this deponent is not certain. John Sutton, Jr., lived near St. George's, the conversations with him were at St. George's, about the same time as the last mentioned, and since.

Second. To the second cross interrogatory, deponent answers and says: that he has never been a witness in other causes for the complainant.

Third. To the third and last cross interrogatory, this deponent answers nothing.

JOHN ASH.

Sworn, examined, and subscribed, before

THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

Thomas Janvier, jr., of New Castle county, aged thirty-five years or thereabouts, a witness named, produced, sworn, and examined, on the interrogatories directed to be propounded to him, on the part and behalf of the complainant, deposeth as follows, to wit:

First. To the first interrogatory this deponent saith, that he knows the parties above named, and has known them for about ten years or more—the respondent, he has known since eighteen hundred and thirty; the complainant, he has known since about the year eighteen hundred and twenty-five.

Second. To the second interrogatory he deposeth as follows: that he does know of sums of money paid on account of John Randel, jr., to William Linn Brown; the first payment was a check drawn by John Randel, jr., in favor of William Linn Brown, for one hundred dollars, dated January or February, eighteen hundred and thirty-four, on the Farmer's Bank at New Castle, payable in the

month of March following; this check was cashed by deponent's father. He also, on one occasion, in the month of March, 1833, paid to the mother of William Linn Brown, for said Brown, he being absent from the city of Philadelphia, the sum of seventy dollars, for and on account of John Randel, jr., from whom deponent received the money to be so applied. The sum of one hundred dollars, deponent believes, was paid to Brown for his services as clerk during the progress of trial of John Randel, jr., against the Chesapeake and Delaware Canal Company; the seventy dollars was paid by deponent to Brown, at the request of Randel, to enable William Linn Brown to go to Washington to see Mr. Clayton, on John Randel's business. Those are all the payments that deponent now recollects.

Third. To the third interrogatory he deposeth as follows: that he paid, on the eleventh day of March, eighteen hundred and thirty-three, to Josiah F. Clement, the sum of thirty dollars, taking for it a receipt, as set forth in this interrogatory. The history of that transaction is as follows: deponent, at that time, was in Philadelphia, as commissioner under the appointment of the Superior Court of the State of Delaware, taking depositions in the case of John Randel, jr., against the Chesapeake and Delaware Canal Company; having been nominated by Randel, and looking to him for pay, and finding a sum of money he had received from him, being nearly exhausted, he wrote Randel for a further sum of fifty dollars, who enclosed a draft, according to request, for the sum of one hundred and fifty dollars, which draft was accepted by Richard Varrick De Witt. Randel instructed deponent that William Linn Brown should be paid seventy dollars, which he received, and Clement thirty dollars, the residue for deponent. That through the friendly agency of Thomas J. Wharton, Esq., of Philadelphia, received the money for the draft at the Farmers and Mechanics' Bank, on the ninth day of March, 1833, and on the eleventh day of March, deponent drew it out by check, being the same upon which he paid thirty dollars to Josiah F. Clement. The reason why the receipt was taken in its present form was, that Clement and deponent stood in the relation of commissioner and witness. That the money, in fact, never went into William Linn Brown's hands, but was derived from the source hereinbefore stated. That this deponent never had any money from Brown, on any occasion, except a loan of five dollars for a single day, for which he took an evidence of indebtedness from him, at which time he plead extreme poverty. Deponent says that the seventy dollars was paid to William Linn Brown's mother for him, at which time he gave her the aforementioned receipt, and took her, Mrs. Brown's, receipt for it and the seventy dollars. Mr. Brown afterwards informed deponent the transaction was all right.

Lastly. To the fourth and last interrogatory, on the part and behalf of the complainant, he deposeth, that he knows no other matter or thing material to the plaintiff in this cause.

THOS. JANVIER, Jr.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

To the first cross interrogatory, to the interrogatories in chief, propounded to this deponent, he answers, to the payment of one hundred dollars upon the check of John Randel, jr., to William Linn Brown, mentioned in deponent's answer to the second interrogatory, he was present at his father's house in New Castle, and saw the money paid for said check to William Linn Brown, whether in cash or by a check, deponent cannot now recollect. No other person was present at this transaction, as deponent recollects. The payment of seventy dollars, mentioned in the second interrogatory, was made at Mrs. Brown's house at Philadelphia, to her, for William Linn Brown, no other person being present.

Second. To the second cross interrogatory, this deponent, not having answered the complainant's concluding interrogatory to any extent, says nothing.

Last. To the last cross interrogatory, this deponent answers, that he knows no other matter or thing material to the respondent in this cause.

THOS. JANVIER, Jr.

Sworn, examined, and subscribed, before
THOS. McDOWELL,
GEO. B. RODNEY,
Commissioners.

Joseph M. Lafferty, the witness named in the interrogatories with Thomas Janvier, jr., annexed to this commission, was prevented from appearing before the commissioners by sickness, as it is represented, and as they believe.

THOS. McDOWELL,
GEO. B. RODNEY.

JOHN RANDEL, Jr., vs. WILLIAM LINN BROWN. } C. C.—In equity.

April session, 1837.—No. 1.

Interrogatories for witnesses who may be produced, sworn, and examined, on the part of the complainant, under a commission to be issued on the part of the complainant, at New Castle, in Delaware.

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Complainant's commissioners:
GEORGE B. RODNEY, Esq.,
THOMAS McDOWELL, Esq., or either of them.

Interrogatory 1st. Do you know the parties above named, or either of them; and how long have you known them, or either of them?

Interrogatory 2d. Did or did not the complainant, John Randel, jr., resort to corrupt means to influence you as a witness in this cause? Did he show or communicate to you, previous to your being examined as a witness in this cause, on a former occasion, the deposition of Richard Varrick De Witt? Did you ever inform the defendant, William Linn Brown, that the complainant, John Randel, jr., had resorted to corrupt means to influence you as a witness; or that he had shown you the deposition of Richard Varrick De Witt, previously to your being examined as a witness in this cause, on a former occasion?

Interrogatory 3d. Was the said defendant, William Linn Brown, examined as a witness for the plaintiff, in a certain action tried in the month of May or June, 1839, between James Rogers, plaintiff, and John Randel, jr., defendant, at New Castle, in the superior court of Delaware? Were you present at the said trial? Who else were present? Who were the judges? Did you hear the said William Linn Brown say any thing, as a witness and under oath, as to the cause of his quarrel with the said John Randel, jr.? If aye, set forth particularly all he said.

Interrogatory 4th. Do you know—and if so, by what means—of any and what payments of money, by the said John Randel, jr., or by Mrs. Letitia Randel, his wife, to the said William Linn Brown? If aye, when and why were the said payments made—for what services—how often—to what amount? State particularly all your knowledge in the premises.

Interrogatory 5th. Do you know any thing further which may be material to the plaintiff? If aye, please to set forth the same fully and at large, as if you were particularly interrogated in relation thereto.

C. INGERSOLL,
J. R. INGERSOLL,
For the Complainant.

JOHN RANDEL, Jr.,
vs.
WILLIAM LINN BROWN.
} Circuit Court, U. S.—In equity.

April session, 1837.—No. 1.

Cross interrogatories of respondent to Andrew C. Gray, Joseph Lafferty, and Thomas Janvier, junior, witnesses who may be produced and examined, under complainant's commission to New

Castle, State of Delaware—protesting that the second and third interrogatories are leading, and that the subject of the second interrogatory in chief is irrelevant and inadmissible—proceeds to file his cross interrogatories under protestation.

1st. Were you not shown by complainant, or any one else, and whom, a letter of Richard Varrick De Witt to complainant, relating to the subject of controversy of this suit? If yea, state the contents, so far as you can remember.

2d. Did the respondent, in the cause referred to in the complainant's third interrogatory, of James Rogers against John Randel, jr., give any testimony at all as to the cause of quarrel between himself and complainant? Be so good, in your answer, as not to confound this suit of Rogers against Randel with any other suit against the same person, in which respondent may likewise have been a witness. If you answer affirmatively, in part or in whole, the complainant's third interrogatory, state whether you took full written notes of the testimony given by respondent. If not, state in relation to what parts of his testimony you took notes, and attach the same, or a copy thereof, to your deposition.

3d. If you testify as to any payments by complainant, his wife, or any other person, to respondent, please to state whether you were present, and saw any one or more, and which of them, made; and the amount of each and every payment or payments so made, with the time and particulars of making the same, and in whose presence besides your own the same were made.

4th. Do you know any other matter or thing that may be useful to respondent? If aye, relate the same, as if thereto particularly interrogated.

CADWALADER, *for Respondent.*

Commissioner on the part of the respondent at New Castle: GEORGE B. RODNEY, Esq., one of the complainant's commissioners.

Depositions of witnesses produced, and sworn, and examined, at the house of Isaac H. Register, in the town of New Castle, in the county of New Castle and State of Delaware, by virtue of a commission issuing from the honorable the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, directed to George B. Rodney, Esq., and Thomas McDowell, Esq., or either of them, for the examination of witnesses in a certain cause depending in said court, wherein John Randel, junior, a citizen of the State of Delaware, is complainant, and William Linn Brown, a citizen of Pennsylvania, is the respondent.

Joseph Lafferty, of the town of New Castle, in the county of New Castle, in the State of Delaware, aged twenty-eight years, or thereabouts, being produced, sworn, and examined on behalf of the complainant, deposeth as follows:

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First. To the first interrogatory on behalf of the complainant, he deposeth as follows: That he has been acquainted with the complainant, John Randel, junior, since the year eighteen hundred and thirty, and has known the respondent, William Linn Brown, since the month of March, eighteen hundred and thirty-one.

Second. To the second interrogatory on behalf of the complainant, he deposeth as follows: That John Randel, junior, never did, at any time, at any place, or on any occasion, resort to any corrupt means to influence him as a witness in this cause. He never, at any time, shew him or communicated to him, previous to his examination as a witness in this cause, on a former occasion, and to this time, the depositions of Richard Varrick De Witt. Deponent further swears, that he never did, at any time, place, or occasion, inform William Linn Brown that John Randel, jr., the complainant, had attempted to influence him as a witness, or shown or communicated to him the depositions of Richard Varrick De Witt, previously to his examination as a witness.

Third. To the third interrogatory on behalf of the complainant, he deposeth as follows: That he has no knowledge of the subject matters enquired about in this interrogatory.

Fourth. To the fourth interrogatory on the behalf of the complainant, he deposeth as follows: That he knew of very frequent sums of money paid by John Randel, jun'r, Mrs. Letitia Randel, his wife, and Mrs. Massey, the mother of Mrs. Randel, to William Linn Brown; the payments were made at the house of John Randel, jun'r, in presence of this deponent, to William Linn Brown, on account of his services as a clerk, for writing, and services relative to the canal. He does not know the amount paid, or how often.

Fifth. To the fifth interrogatory on behalf of the complainant he deposeth as follows: That he was in the employment of John Randel, jr., and much in the office at the same time William Linn Brown was in the same employment, as clerk, by the day; that payments were made, when they required, at all times, by this deponent, from the employer, and when sent on business from home, always received money to meet his demands; he knows no other thing that may benefit the complainant or is material in the cause.

JOS. M. LAFFERTY.

Sworn, taken, and subscribed to, September 6, 183 , before

THOS. McDOWELL, *Com'r*.

Answers to cross interrogatories.

First. To the first cross interrogatory on behalf of the respondent, he deposeth as follows: That he has no knowledge whatever of the subject matters inquired about in this interrogatory.

Second. To the second interrogatory on behalf of the respondent, he deposeth as follows: That he has no knowledge of the subject matters inquired about in this interrogatory.

Third. To the third interrogatory on behalf of the respondent, he deposeth as follows: That he was present and saw frequent payments made to the respondent as named in deponent's answer to the complainant's fourth interrogatory, to which he refers.

Fourth. To the fourth interrogatory on behalf of the respondent he deposeth as follows: That he knows no other matter or thing that may benefit the respondent in this cause.

JOS. M. LAFFERTY.

Sworn, taken, and subscribed to, September 6, 1839, before
THOS. McDOWELL, *Comm'r*.

Thomas Janvier, jr., Esq., of the town of New Castle, in the State of Delaware, aged thirty-five years, or thereabouts, being produced, sworn, and examined, on the part and behalf of the complainant, he deposes as follows:

First. To the first interrogatory on behalf of the complainant he deposes as follows: That he refers to his examination in chief.

Second. To the second interrogatory on behalf of the complainant, he deposes: That he answers to each and every of the questions propounded in the negative, having no knowledge of the subject matters inquired about in this interrogatory.

Third. To the third interrogatory on behalf of the complainant, he deposes as follows: That he was not present at the trial of the cause referred to, or has he any knowledge of the subject matters inquired about in this interrogatory, from his own knowledge, except that he knows who were the judges of the superior court at that time, but knows not who of them sit on the trial from his own knowledge.

Fourth. To the fourth interrogatory on behalf of the complainant, he deposes as follows: That he would refer to his former examinations in this cause, (except so far as to notice a receipt given by Josiah F. Clement to this deponent, for the sum of thirty dollars, and dated eleventh March, eighteen hundred and thirty-three, and from the manner in which said receipt is drawn, William Linn Brown uses in a manner contrary to the truth of the real transaction. The history of that receipt and the reason of the form existing as it is is as follows: in the winter eighteen hundred and thirty-three, while doing duty in Philadelphia, as a commissioner for John Randel, jr., he deponent had occasion to write him for further funds, he Randel sent him a draft for one hundred and fifty dollars, instructing me to give William Linn Brown one hundred dollars of that money, and that he Brown should give Josiah F. Clement thirty dollars of that one hundred. Mr. Brown was at that time absent from the city, and, as his mother informed this deponent, he was on some collecting tour. J. F. Clement happening to be at deponent's room, he paid to him his proportion of the money; we standing in the relation of commissioner and witness, deponent thought it most proper

to draw the receipt in its present form; this receipt he gave to the mother of Mr. Brown, together with his proportion, seventy dollars, he believes, and took her receipt therefor, which he has since lost or destroyed, not dreaming of any thing of this kind occurring. Those facts are distinct in deponent's memory, but, as a corroboration of them, the last time he was in Philadelphia he called at the Mechanics' Bank, (where, through the friendly offices of Thomas J. Wharton, the draft was discounted,) and found that, on the ninth day of March, A. D. 1833, the discount was effected; that on the eleventh deponent's check was paid; that on the same day he made the payment to Clement, as will appear by the date of the receipt; no part of that thirty dollars ever went into the hands of Mr. Brown, neither has deponent ever had any money from Brown, except a loan of five dollars for a single day; at the time of getting which he plead extreme poverty, and, unless my recollection fails very much, took an evidence of indebtedness therefor.

Fifth. To the fifth interrogatory on behalf of the complainant, he deposes: That he knows no other matter or thing that he recollects of that may benefit the complainant in this cause.

THOS. JANVIER, Jr.

Sworn, taken, and subscribed, September 7, 1839, before
THOS. McDOWELL, *Com'r.*

Answers to cross interrogatories of the Respondent.

First. To the first interrogatory on the part and behalf of the respondent, Thomas Janvier, jr., esquire, deposes as follows: He has no knowledge of the subject matters inquired about in this interrogatory.

Second. To the second interrogatory on the part and behalf of the respondent he deposes: That he was not present at the trial referred to, or does he possess any knowledge of the subject matters inquired about in this interrogatory at all.

Third. To the third interrogatory on the behalf of the respondent, he deposes: That he has no knowledge of the matters inquired about in this interrogatory, except so far as he may have answered under this examination, and former examinations to which he refers.

Fourth. To the fourth interrogatory on behalf of the respondent, he deposes: That he knows no other matter or thing that may be useful to the respondent.

THOS. JANVIER, Jr.

Sworn, taken, and subscribed, September 7, 1839, before
THOS. McDOWELL, *Com'r.*

Andrew C. Gray, of the town of New Castle, in New Castle county, and State of Delaware, being produced, sworn, and examined, aged thirty-five years or thereabouts, deposes as follows:

First. To the first interrogatory on the part of the complainant, he deposes as follows: That he knows the parties, complainant and defendant; has known them for seven or eight years past.

Second. To the second interrogatory on behalf of the complainant, the deponent answers: That John Randel, jr., never did resort to any corrupt means to influence him as a witness in this cause. Deponent hath never seen the deposition of Richard Varrick De Witt; nor hath its contents ever been communicated to or read to him, this deponent; nor hath any other paper, bill, or answer, or document connected with said cause, been seen or read by this deponent, not even his, this deponent's, own deposition. That he, this deponent, never informed William Linn Brown that John Randel, jr., resorted to any corrupt means to influence him as a witness, or had shown him the deposition of Richard Varrick De Witt previously to his being examined as a witness.

Third. To the third interrogatory on behalf of the complainant, he deposes as follows: That he was present at the trial of certain actions between James Rogers, plaintiff, and John Randel, jr., defendant; and George Reed, administrator, plaintiff, and John Randel, jr., defendant, in the month of May of the present year. William Linn Brown was examined in one or both of the actions as a witness for the plaintiff. A number of persons were present, whom he does not recollect. The judges were John M. Clayton, chief justice of the superior court; Samuel M. Harrington, and Caleb S. Layton, associate justices thereof. The matters sworn to by William Linn Brown in the cause or causes referred to, this deponent does not particularly recollect. That he took no note of said Brown's evidence; this deponent recollects however, that one reason assigned by William Linn Brown of his quarrels with John Randel, Jr. was that he, Randel, would not pay his debts.

Fourth. To the fourth interrogatory on behalf of the complainant, deponent answers: That he has no knowledge of the matters enquired about in this interrogatory.

Fifth. To the fifth interrogatory on the part and behalf of the complainant, he deposes: That he knows no other matter or thing that can benefit the complainant in this cause.

ANDREW C. GRAY.

Sworn, taken, and subscribed to, September 9, 1839, before
THOS. McDOWELL,
Acting Commissioner.

Answers to cross interrogatories on the part of the Respondent.

First. To the first interrogatory on behalf of the respondent, Andrew C. Gray deposes as follows: That he, this deponent, hath been shown a letter of Richard Varrick De Witt to John Randel, jr., or the contents of such a letter hath been mentioned to this deponent by John Randel, jr. The said letter related to the subject of William Linn Brown's compensation for services rendered John Randel, jr. The contents of said letter cannot be now more par-

ticularly stated by this deponent. The first knowledge deponent had of this letter was before he was examined as a witness in this cause; and after he had stated to the said John Randel, jr., his recollection of the matters sworn to by this deponent in said cause at Philadelphia. The said letter may have the effect of strengthening this deponent's confidence in his recollections of said matters. It did not however have the effect to vary or change the nature or extent of his said recollections.

Second. To the second interrogatory on the part and behalf of the respondent, he deposes as follows: That he does not recollect whether William Linn Brown gave evidence in only one or both of the causes entitled James Rogers against John Randel, jr., and George Reed, jr., administrator, against John Randel, jr., deponent cannot answer any further than he has already answered to the third interrogatory of the complainant in relation to William Brown's testimony. Deponent did not take notes of his testimony.

Third. To the third interrogatory on the behalf of respondent, he answers: that he has no knowledge of the matters enquired about in this interrogatory.

Fourth. To the fourth interrogatory on behalf of the respondent, he answers: he knows no other matter or thing that may benefit the respondent.

ANDREW C. GRAY.

Sworn, taken, and subscribed to, September 9th, 1839, before
THOS. McDOWELL,
Acting Commissioner.

I certify that George B. Rodney, esq., named as commissioner in the annexed commission with the undersigned, declined acting, or was necessarily prevented by business in the court of chancery of the duty required.

THOS. McDOWELL,
Acting Commissioner.

JOHN RANDELL, Jr. }
vs. } In Equity, C. C.
WILLIAM LINN BROWN. }

Interrogatories for witnesses who may be produced, sworn, and examined, under a commission to be issued on part of the complainant to the village of St. George's, in the county of New Castle, in the State of Delaware.

1st. Do you know Job W. Folwell? How long have you known him? At what places, and in what occupations? Do you know his general character for veracity? Is the same good or bad? From your knowledge thereof, would you believe him upon his oath?

2d. Do you know Samuel Sutton? How long have you known him? At what places, and in what occupations? Do you know

his general character for veracity? Is the same good or bad? From your knowledge thereof, would you believe him upon his oath?

3d. Do you know any thing further, which may be material to the complainant? If aye, set forth the same fully and at large, as if more particularly interrogated in relation thereto.

Commissioners for the complainant at St. George's:
GEORGE B. RODNEY, Esq.
THOMAS MCDOWELL, Esq.
JOHN WOOD, Esq., or any one or more of them.

JOHN RANDEL, Jr.
vs.
WILLIAM LINN BROWN. } Circuit Court, U. S.—In equity.

April session, 1837.—No. 1.

Cross interrogatories of respondent for witnesses who may be produced and examined under complainant's commission to the village of St. George's, in the county of New Castle, in the State of Delaware, respondent objecting to the issuing of this commission, until the witnesses to be examined shall be named, proceeds under protestation to file cross interrogatories.

1st. If you answer any part of the first or second interrogatory in the affirmative, or the last branch of either in the negative, state the names of the persons whom you have heard speak against the veracity of the said Job W. Folwell, or Samuel Sutton, or both; and the occupations and residences of such persons, and the times and places when and where the same was by them respectively spoken against.

2d. Are you on good or bad terms with said Job W. Folwell? If on bad terms, state how long you have been so? Are you on good or bad terms with the said Samuel Sutton? If on bad terms, state how long you have been so?

CADWALADER,
Solicitor for Def't.

Commissioner for respondent under commission to St. George's:
GEO. B. RODNEY, Esq.

Depositions of witnesses produced, sworn, and examined, on the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and thirty-nine, at the house of John Sutton, in the village of St. George's, in New Castle county, in the State of Delaware, by virtue of a commission issuing from the Circuit Court of the United States, in and for the eastern district of Pennsylvania, in the 3d district, to George B. Rodney, Thomas McDowell, and John Wood, (one or more,) directed for the examination of witnesses in a certain cause depending in said court, wherein John Randel, jr., a citizen of the State of Delaware, is complainant, and William Linn Brown is respondent.

Doct. James N. Sutton, of Saint George's, in New Castle county, aged forty-two years or thereabouts, being produced, sworn, and examined, on behalf of the complainant, deposeth as follows:

First. To the first interrogatory on the part of the complainant, he deposeth as follows: that he knew Job Folwell in former years. He knew him several years past, about four years, at Delaware city, as a keeper of a public house. He has had but a limited acquaintance with him, and cannot say if his character is good or bad; nor can he say that he would or would not believe him upon oath.

Second. To the second interrogatory on the part of the complainant, he deposeth as follows: that he has known Samuel Sutton for eight years past; that he was in his employ, sailing a vessel for him, this deponent, and other services, about two years, occasionally. His general character for veracity is bad, and from his present impressions, he could not believe him upon his oath, in a matter in which he had any interest at stake.

Third. To the third interrogatory on the part of the complainant, he deposeth as follows: that he recollects that at the time the attachments were laid by complainant on the canal, Job W. Folwell and Samuel Sutton were employed by John Randel, jr., by the day, through deponent, and were paid by the day; and he believes that William Linn Brown was also employed by the day, and knows of payments having been made to him by Randel, on account. That William Linn Brown, he acted as an assistant and clerk, and for that purpose alone, and not in the capacity of counsellor, or did he ever learn he had been called upon as an attorney.

JAMES N. SUTTON.

Sworn, taken, and subscribed to, August 29, 1839, before
THOS. McDOWELL,
Commissioner.

Cross interrogatories.

First. To the first interrogatory on the part of the respondent, he deposeth as follows: that he has no knowledge of the subject matters inquired about in this interrogatory, other than his own, declared in his answers to the plaintiff's first and second interrogatories, to which he refers.

Second. To the second interrogatory on the part of the respondent, he deposeth as follows: that he is not on bad terms with either Job W. Folwell or Samuel Sutton.

Lastly. The deponent answers, that he knows no other matter or thing that may benefit the respondent in this cause.

JAMES N. SUTTON.

Sworn, taken, and subscribed to, August 29, 1839, before
THOS. McDOWELL,
Commissioner.

William P. Veach, of New Castle county, in the State of Delaware, *and State of Delaware*, aged forty-six years or thereabouts, being produced, duly sworn, and examined, on the part and behalf of the complainant, John Randel, jr., he deposes as follows:

First. To the first interrogatory on behalf of the complainant, he deposes as follows: that he is acquainted with Job W. Folwell, he has known him for ten or twelve years past. He knew him at Delaware city, as keeper of a public house there, in years past. He is acquainted with the general character of Job W. Folwell, his reputation was bad, and was not that of a man of strict veracity; and from which knowledge, he, this deponent, had of the said Job W. Folwell, he could not believe him upon oath, in any matter in which he had the least interest.

Second. To the second interrogatory on the behalf of the complainant, he deposes as follows: that he was acquainted with Samuel Sutton, knew him for about seven years past, at St. George's and Delaware city; he was captain of a shallop part of the time, and a part of his time said to be in John Randel, jr.'s employ. His general character was bad, but this deponent was not sufficiently acquainted with him to say he would or not believe him upon oath.

Third. To the third interrogatory on behalf of the complainant, he deposes as follows: that he knows no other matter or thing that may be material to complainant in this cause.

WILLIAM P. VEACH.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

Answer to cross interrogatories on the part of the Respondent.

First. To the first interrogatory on behalf of the respondent, William P. Veach deposes as follows: that he has heard several persons, and on several occasions, at his own house, and other places, make declarations against the veracity of Job W. Folwell and Samuel Sutton; deponent does not now recollect the names of the persons, but that their residences were in New Castle county, and the neighborhood of Folwell and Sutton.

Second. To the second interrogatory on behalf of the respondent, he deposes: that he is, and always has been, on good terms with Job W. Folwell and Samuel Sutton, since he has known them; never had any disagreement with either of them whatever.

WILLIAM P. VEACH.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

Samuel Ford, of New Castle county, in the State of Delaware, aged thirty years, or thereabouts, being produced, sworn and examined, on behalf of the complainant, John Randel, jr., he deposes as follows:

First. To the first interrogatory on behalf of the complainant, he deposes as follows: that he barely knew Job W. Folwell in years past, when he saw him as a public house keeper, in Delaware city; he knows nothing, from his own knowledge, of his character for veracity, or could he say if he would or not believe him upon oath.

Second. To the second interrogatory on behalf of the complainant, he deposes as follows: that he was acquainted with and knew Samuel Sutton. He has known him for eight years past, in December, 1831. He first knew him in the employ of Dr. James N. Sutton, superintending wood choppers at Welsh point, and was sailing a vessel for said Dr. Sutton, from St. George's. He, this deponent, knows that his general character for veracity was bad, and most decidedly this deponent swears he would not believe the said Samuel Sutton upon his oath, in the most trifling matter, from his knowledge of him.

Third. To the third interrogatory on behalf of the complainant, he deposes as follows: That he knows no other matter or thing which may be material to the complainant.

SAMUEL FORD.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

Answers to cross interrogatories on behalf of Respondent.

First. To the first interrogatory on the part of the respondent, Samuel Ford deposes as follows: That he has generally heard Samuel Sutton's character spoken against, by whom, the times and places, he does not recollect; the residences of such as impeach his veracity, known to deponent, are in New Castle county.

Second. To the second interrogatory on the behalf of the respondent, answers: That he is not on bad terms with either Job W. Folwell or Samuel Sutton.

SAMUEL FORD.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

John Ash, of New Castle county, aged thirty-nine years, or thereabouts, being produced, sworn, and examined on behalf of John Randel, jr., the complainant, he deposes as follows:

First. To the first interrogatory on behalf of the complainant, he deposes as follows: He knew Job W. Folwell at Delaware city, some years past, as keeper of a public house; his acquaintance

with him was very limited; and cannot say, from his own personal knowledge, that he sustained the character for veracity, and is not prepared to say that he would believe him upon oath.

Second. To the second interrogatory on behalf of the complainant, he deposes: That he knew Samuel Sutton for about eight years past at Saint George's and Delaware city, and passing through the canal as captain of a vessel. The general character of Samuel Sutton was bad for veracity; and deponent further swears that he could not believe him upon oath.

Third. To the third interrogatory, he has no other knowledge.

JOHN ASH.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

Cross interrogatories on behalf of the Respondent.

First. To the first interrogatory on behalf of the respondent, he deposes as follows: That he does not now recollect the names or persons whom he has heard speak against Job W. Folwell's or Samuel Sutton's veracity, or what the occupations of such persons, or their particular residences, only so far that they were residents of the neighborhood of Saint George's, in New Castle county, and repeatedly spoken of, at different times and places, by respectable men.

Second. To the second interrogatory on behalf of the respondent, he deposes: That he has always been on good terms with Job W. Folwell and Samuel Sutton since he has known them.

JOHN ASH.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

John Sutton, jr., of New Castle county and State of Delaware, aged thirty-nine years, or thereabouts, being produced, duly sworn, and examined on behalf of the respondent, deposes as follows:

First. To the first interrogatory on behalf of the complainant, he deposes as follows: He knew Job W. Folwell, a number of years past, at Delaware city, as keeper of a public house; his general reputation for veracity was bad in the neighborhood; cannot say that he would believe him upon oath.

Second. To the second interrogatory on behalf of the complainant, he deposes: That he knows Samuel Sutton, and has known [him] for about ten years; he first knew him at Delaware city, as employed in stopping vessels on the canal, and captain of a vessel; his character for veracity was bad, and he, this deponent's, impression is, that he would not believe the said Samuel Sutton upon oath.

Third. To the third interrogatory he deposes as follows: That Job W. Folwell was a man who was easily persuaded to do good or evil to suit his purpose.

JOHN SUTTON, Jr.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

Answers to cross interrogatories on behalf of the Respondent.

First. John Sutton, jr., to the first interrogatory on behalf of the respondent, deposes as follows: That he has heard many persons, on various occasions and places, speak against the veracity of Job W. Folwell and Samuel Sutton, respectively; does not recollect who they were, or their several occupations; their residence is New Castle county.

Second. To the third interrogatory on behalf of the respondent, he deposes as follows: That he has always been on good terms with Job W. Folwell and Samuel Sutton since his acquaintance with them.

JOHN SUTTON, Jr.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

Benjamin Cooper, of New Castle county, in the State of Delaware, aged thirty-nine years, or thereabouts, being produced, sworn, and examined on behalf of the respondent, deposes as follows:

First. To the first interrogatory on behalf of the complainant, deposes as follows: That he has known Job W. Folwell, for many years past, at Delaware city, where [he] resided for two years and kept a public house; his general character for veracity was bad, and he would not be willing to believe him upon oath, unless compelled so to do.

Second. To the second interrogatory on part of complainant, he deposes: That he knew Samuel Sutton at Delaware city; he sailed a vessel for Dr. Sutton from Saint George's; he, this deponent, from his knowledge of the said Samuel Sutton and his general conduct, [says] that he was a very worthless character, not entitled to credit, but he cannot say if he would or would not believe him upon oath.

Third. To the third interrogatory on behalf of the complainant, he deposes: That Job W. Folwell instigated and assisted a man to defraud him out of a sum of money, in which this deponent detected him; he knows no other matter or thing that may be material to the complainant.

B. COOPER.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

Answers to cross interrogatories on behalf of the Respondent.

First. To the first interrogatory, on behalf of the respondent, Benjamin Cooper deposes: That he has heard various persons, at different places and occasions, speak against the veracity of Job W. Folwell and Samuel Sutton; does not remember the names, occupations, or residences, except so far that they reside in New Castle county.

Second. To the second interrogatory, on behalf of the respondent, he deposes: That he is on good terms with Job W. Folwell and Samuel Sutton.

B. COOPER.

Sworn, taken, and subscribed to, September 10, 1839, before
THOS. McDOWELL,
Acting Commissioner.

I certify that George B. Rodney, named as commissioner in the annexed commission, declined acting, being necessarily prevented by business in chancery; and John Wood, also named, was prevented by very ill health rendering him incapable to perform the duties required.

THOS. McDOWELL,
Acting Commissioner.

William M. Camac sworn.

R was indebted to me, in 1836, more than $2,000. There was an order of $2,000 on Mr. Wm. Linn Brown, accepted by him, for $2,000. That sum was not paid 22d October, 1836; it was not paid till—(stopped by Mr. Tyson.)

Re-examined.

It was paid in July, '37, by Mr. Randel.
I attached the stock of Mr. Randel.
I never called on Mr. Brown for payment.

Charles J. Ingersoll sworn.

I held a note of J. R. jr., given to me for my fee in his case—a. My fee was $800—the note was $800; I am not quite sure, between $800 and $850. I have protested once or twice. I at last paid it, and he gave me $800 in his loan. I think on one occasion the $13 or $14 discount was paid through defendant's agency—paid for P.

This, I should suppose, to be Mr. Clayton's writing.

I have received the interest, with $800 certificate, two or three times, half yearly. I feel very confident three times, or perhaps four times. I think R. said he would pay the note as soon as he had the means; and he did, for he gave the certificate.

To the honorable Kensey Johns, esquire, chancellor of the State of Delaware.

Humbly complaining, showeth unto your honor your orator, John Randel, junior, formerly of the State of New York, but now of the State of Delaware, and county of New Castle, civil engineer, that heretofore, to wit: on or about the twenty-sixth day of March, in the year eighteen hundred and twenty-four, your orator made, and entered into a written contract to and with the Chesapeake and Delaware Canal Company. Said company was incorporated, as well by the States of Maryland and Delaware, as by the State of Pennsylvania. And your orator begs leave to refer to the original charters or acts of incorporation granted and passed by the respective legislatures of those several States, which he prays may be considered as a part of his bill of complaint, and that he may have leave to exhibit the same at the hearing of this cause, as such, as well as the various supplements or amendments to said charters. The said company duly executed the above mentioned contract in writing, under the seal of said corporation, in and by which said contract the said company was bound to pay your orator for work by him done in the excavation and construction of about three-fifths of the whole line of their canal between the Chesapeake and Delaware bays. The part of the canal so constructed, to be cut by your orator, and paid for as aforesaid, was within the limits of the State of Delaware, and county of New Castle, and extended from the Delaware harbor, at Delaware city, westwardly, nigh the State line, between Delaware and Maryland. And for greater certainty, your orator refers to said contract as it is set out in the declaration and pleadings hereto appended, and herewith exhibited, marked A.

And your orator further charges, that on or about the fifteenth day of April, eighteen hundred and twenty-four, he commenced work under the said contract, and continued in the employment of the said company until on or about the thirtieth day of September, eighteen hundred and twenty-five, when he was discharged by the said company, and not permitted to complete his said contract, or fully to perform the same. He had been defrauded by the said company in their refusal to pay him for the work he had done for them, as well as in their refusing to permit him to complete the most profitable and advantageous part of his contract. To obtain legal redress for these injuries, he commenced an action of covenant on the said contract against the said company, on or about the first day of January, eighteen hundred and twenty-six; and he expressly charges, that his said action was brought in the district court for the city and county of Philadelphia, to the March term of the said court, in the year last aforesaid; and to avoid any possible misconception or evasion on this subject, he charges and avers, and so the fact is, that he brought an action on the said contract for the above stated causes of action, against the said company, long before the

said company contracted or attempted to contract for any of the loans hereinafter mentioned, or had attempted to mortgage any of the tolls, or any part of their canal, or any interest therein.

And your orator further showeth unto your honor, that afterwards, and after he had commenced his said action in Philadelphia as aforesaid, the said company appeared thereto, at the March term of the said court, in the year 1826; and pending the said action, your orator being informed that the tolls of the said company could by the terms of their charter be collected only in the said canal, and that he could not therefore avail himself of a judgment against the said company, unless he should seek redress in one of the States of Delaware or Maryland where the tolls were collected, which then did, and still do, constitute the principal available fund, for the satisfaction of his claims. Your orator did, on the eighteenth day of June, in the year eighteen hundred and twenty eight, bring an action of covenant against the said company in the then court of common pleas of the State of Delaware, in and for the county of New Castle, on and by virtue of the said contract. Pending the said last mentioned action, a rule was had and obtained in the said last mentioned court, on motion of James A. Bayard, esquire, of counsel for the said company, to compel your orator to elect in which of the said courts, where his said action had been brought as aforesaid, he would proceed, and to compel him to strike off or discontinue the suit commenced in Philadelphia, or that his suit in Delaware should be struck off. In obedience to this rule, your orator elected to proceed in the State of Delaware where tolls were collected, and in which he charges, that about four-fifths of the said canal is situate. His suit was therefore discontinued in the district court for the city and county of Philadelphia, or he suffered, and caused to be entered a *non pros.* therein, and paid all the costs of said action, and recorded his election to proceed with the action in Delaware, on the records of the court of common pleas aforesaid. This action was continued in the said last mentioned court until the same was, in the year 1832, transferred to the superior court of the State of Delaware, in and for New Castle county, by the operation of the amended constitution of that State. To enable this honorable court to understand his cause of action, your orator refers to the exhibit of the pleadings therein, and the several judgments therein rendered, marked A. And he charges, that said exhibit A is a true and faithful copy of the records of said action, and of the entries, pleadings, and proceedings therein; and he demands it as a right, that the several defendants to this, his bill of complaint, shall unequivocally answer whether the said exhibit A does or does not contain such true and faithful copy, each of them having an opportunity of inspecting the original record, or obtaining a copy thereof; and having therefore no legal excuse for not fully admitting or denying this charge. And your orator avers, and so the fact is, that

in the said superior court of the State of Delaware, in and for New Castle county, he did, after a jury trial, which lasted about seven weeks, to wit: on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and thirty-four, obtain a judgment on inquisition returned by a jury in open court, for the sum of two hundred and four thousand seven hundred and sixteen dollars and thirty-six cents, damages sustained by your orator on occasion of the breach of covenant in the seventh count of his declaration, as amended, and for five hundred dollars costs; and also a judgment upon verdict of a jury on issues joined, in his favor, for the further sum of twenty-one thousand six hundred and sixty-nine dollars and forty-eight cents, with six cents costs, besides the costs expended, which amounted to the further sum of two thousand six hundred and forty-nine dollars and ninety-five cents; making in all the full sum of two hundred and twenty-nine thousand five hundred and thirty-five dollars and seventy-nine cents, lawful money of the United States of America. And your orator expressly charges, and so is the fact, that a large part of his said judgment was for damages occasioned by the said company's nonpayment for his work done in cutting the said canal, and constructing the same. And your orator further showeth unto your honor, that on the twenty-seventh day of January, in the year eighteen hundred and thirty-four, twenty-one thousand eight hundred dollars, part of the said sum for which the said judgments were rendered, with interest thereon from that date, was assigned to the use of Samuel H. Hodson, esquire, cashier of the bank of Smyrna, as trustee; and that afterwards, and on the same day, the further sum of ten thousand dollars with interest from that date, was assigned to the use of the said Samuel H. Hodson, esquire, cashier and trustee as aforesaid; and that on the nineteenth day of September in the same year, the sum of two thousand dollars, with interest due and to become due thereon, being one-fifth of the sum last mentioned, was endorsed for the use of William Lynn Brown, as will appear by the transcript of the said judgments and the exhibit hereto annexed, marked A. But your orator saith, that no part of the said judgments hath been paid or satisfied.

And your orator further showeth unto your honor, that instead of paying the amount of the said judgments, as in justice the said company should have done, every effort in their power has been made to prevent your orator from collecting the same. When, after the expiration of sixty days from the date of his said judgments, your orator caused a writ of attachment to be sued out thereon, he found that, to evade and defraud it, the said company had removed their toll house from the State of Delaware to the tolls of Philadelphia, in open violation of their charter; and he charges, that the reason assigned by them for this act was to enable them to apply the nett profits of the tolls of their canal to the payment of certain

mortgages and judgments herein after mentioned. He also avers, that on the twenty-eighth day of January, 1834, the board of directors of said company did pass a resolution or by-law, directing that in future all tolls on vessels and their cargoes passing from Delaware to Chesapeake should be paid only after the said vessels had entered the basin at the western end of said canal, which is in the State of Maryland; and that this was done for the express purpose of defeating the operation of the attachment laws of this State; and to exclude and defraud the jurisdiction of the courts of this State; and to prevent them, or any of them, from granting any effective redress to your orator. Moreover, your orator avers, and so is the fact, that he caused the said attachment to be laid in the hands of a certain John Wilson, who was at the time of the attachment laid, and for a long time before that had been, duly appointed collector of tolls or toll gatherer at the Delaware tide lock in this State, and at the eastern end of said canal. And your orator avers, that after the said John Wilson had been served with the said attachment as garnishee of the said company, divers sums of money were received and collected by him before the return of said attachment, being tolls of the said company which came to the hands and possession of the said garnishee as toll gatherer as aforesaid.

After the return of the said attachment, the said garnishee was put by your orator to answer according to law, what goods, chattels, rights, credits, or effects of the said company came to his hands, custody, or possession, at the time of the attachment laid, or at any time after; and the said toll gatherer acting, as your orator verily believes and charges, by and under the advice and direction of certain directors of the said company, did, in the superior court of the State of Delaware, for the county of New Castle, where he had been summoned to appear by virtue of the said attachment, make and aver under oath as garnishee as aforesaid, that no goods, chattels, rights, credits, or effects of the said company had come to his hands, custody, or possession, at the time of the said attachment laid, or at any time after; yet your orator avers, and so the fact is, that he hath now in his hands receipts, and other indubitable proofs, showing that the said toll gatherer did receive tolls, money, or effects of the said company after the said attachment was laid, and before the return thereof was made as aforesaid.

And your orator charges the foregoing facts, as matters which he can prove at the hearing of this cause, and further says, that the said toll gatherer hath accounted with the said company for the money so by him attached as aforesaid; and he now charges and hopes to maintain at the hearing of this cause, that the directors of the said company are personally liable to him for this and other fraudulent doings in the matter of the tolls of the said canal; and your orator avers, that not only is the said corporation liable for the payment of his said judgment, but the directors of the said compa-

ny, whose names are hereinafter mentioned, are personally liable to him in this honorable court for all the tolls, except those which were necessary to keep the said canal in repair, and which have been received by the said company since the rendition of his said judgments; and for the support of this his claim, your orator relies on the following statement of facts:

Your orator avers, that on the thirtieth of September, eighteen hundred and twenty-five, when your orator was dismissed as aforesaid, the original capital of five hundred thousand dollars directed to be raised by the charter by subscription for the purpose of cutting the said canal, and perfecting the navigation thereof, had all been subscribed and taken; and before the first Monday in June, eighteen hundred and twenty-six, a sum greatly exceeding the said amount of five hundred thousand dollars, had been subscribed by the Secretary of the Treasury of the United States, by the States of Maryland and Delaware, and other subscribers and stockholders of the said company, and had actually been paid in on account of the subscriptions to the capital stock of the said company, and had been received by the said directors for the time then being, or had been subject to their control and exclusive managements.

They well knew, and your orator charges the fact to be, that after the thirtieth of September, eighteen hundred and twenty-five, money was received on account of subscriptions to the said stock, in amount greatly exceeding the amount of your orator's said judgments, and that by the terms of their said charter, the said subscriptions were expressly made liable to your orator's demand as a contractor of the said company; they also knew that the charter of the said company, in the fourteenth section thereof, expressly provides, in case the original capital and all the other aids *already* granted, should prove insufficient for the cutting of said canal and perfecting the navigation thereof, then the stockholders might increase the said capital stock by additional subscriptions of *real* capital, from time to time, to an unlimited amount; yet falsely pretending that among the "aids already granted" was the power to borrow money for the purpose of cutting said canal, derivable by implication from some of the thirteen preceding sections of their charter, they did, in gross violation of their said charter, in the month of June, eighteen hundred and twenty-six, proceed to borrow immense sums for the purpose of cutting said canal on mortgage of the said canal and the works of the said corporation, and of all the tolls of the said company, except such part or portion of the said tolls as might be necessary to defray the expenses of the said corporation, and to keep its canal and works in repair; and from time to time they have proceeded to borrow other large sums of money for the purpose of cutting said canal on such mortgages, with such exception of the tolls necessary to defray the expenses of the said corporation, and to keep its canal and works in repair.

They thus created, or attempted to create, of their own authority, and without any warrant of law, a stock bearing an interest of six per cent. per annum, payable semi-annually, secured by mortgage on the said canal and its appurtenances, and on the tolls of the said company with the exception aforesaid. And your orator further charges, that by the terms of their contract with the loan holders, all the said loan holders were entitled, at any time before the expiration of the time of payment of the mortgages, in and by which their respective loans were secured, to convert their said loans into capital stock of the said company at the par value of the said stock, and this without any reference to the actual value at the time of such conversion.

And your orator further showeth unto your honor, that divers of the said directors, whose names are hereinafter mentioned, were the original subscribers to the said loans, many of them still remain holders of the stock, so by them created and secured as aforesaid; and your orator stands ready to prove this at the hearing. He now charges that the extent of their speculation in the said stock hath been very great; that many of them subscribed in their own names for the said stock or loan, and many of them persuaded other persons to subscribe in the names of such persons in trust for certain directors. And he avers that the said directors are now deeply interested in the said loans, and he demands from these defendants and each of them, a full statement, in their several answers hereto, of the names of the original loan holders in every instance or case of loan to the said company; a full statement of all speculations in the said stock or loan, and of all transfers thereof; and to whom and when made; and of the names of all persons for whose use, or in trust for whom the said stock or loan hath been held; and of the names of all the present loan holders, distinguishing those really interested from those nominally interested therein; and showing in every case the precise extent or quantity of interest of every one who hath been or is now a director or stockholder of the said company. And your orator further showeth unto your honor, that all the said mortgages were in substance and in terms as is hereinbefore set forth; that the three first mortgages are to secure the following sums to be loaned to the said company: the first is for the sum of three hundred and fifty thousand dollars; is dated the seventeenth day of November, eighteen hundred and thirty-two; it recites a previous indenture of mortgage, for which it professes to be a substitute, said to have been made on the eleventh day of July, eighteen hundred and twenty-six. It is made payable on the face thereof on the first day of January, eighteen hundred and thirty-seven, and was recorded in this State in the office for the recording of deeds in and for the county of New Castle, on the twenty-eighth day of November, eighteen hundred and thirty-two. The second mortgage is made to secure the sums of two hundred

thousand dollars and one hundred and fifty thousand dollars, making together the sum of three hundred and fifty thousand dollars, to be loaned to the said company. It is dated the seventeenth day of November, eighteen hundred and thirty-two. It recites a previous indenture, for which it professed to be a substitute, said to have [been] made the twenty-fourth day of January, eighteen hundred and twenty-seven. It was recorded in this State at the same time and place with the preceding mortgage, and the sum secured by it is made payable like the same on the first day of January, eighteen hundred and thirty-seven. The third mortgage is for the sum of three hundred thousand dollars, in terms like the preceding mortgages; bears the same date, and was recorded at the same time and place; and it recites a previous indenture of mortgage, for which it professes to be a substitute, said to have been made on the first day of February, eighteen hundred and twenty-eight, and is made payable on the first day of January, eighteen hundred and forty. The trustees or persons, to whom these mortgages are executed, to hold the property conveyed in trust for the loan holders, are: Joseph Parker Norris, Nicholas Biddle, Horace Binney, John Read, and Joseph Hemphill. The fourth or last mortgage is for the sum of four hundred thousand dollars; professes to be made to secure certain loans made or to be made to the said company by certain corporate bodies, and by certain individuals. It is dated on the first day of January, eighteen hundred and thirty-three; but was recorded in Philadelphia on the second day of January, eighteen hundred and thirty-two; and in this State, in the office of the recorder for the recording of deeds, in and for New Castle county, on the fifteenth day of May, eighteen hundred and thirty-three. This last mortgage is made payable on the first day of January, eighteen hundred and forty-five. The trustees named in it, are Joseph Parker Norris, Nicholas Biddle, John Read, and Joseph Hemphill; the same persons who were trustees in the preceding mortgages, with the exception of Horace Binney, who refused, when asked by the directors of the said company, to suffer his name to be used as a trustee in said last mentioned mortgage. All the said mortgages are made as well to secure the sums herein before mentioned, as interest thereon, payable semi-annually, on the first days of July and January next succeeding the dates of the said respective mortgages. But your orator charges, that although certain sums were loaned to the said company on the security of the said mortgages, and on the contract to permit the loan holders to convert their loans into stock at par, within certain periods as aforesaid, yet the whole amount secured by the said mortgages was never loaned to the said company, nor expended for its benefit.

Your orator charges, and so the fact is, that the amount of these mortgages exceeds the value of the whole canal, if the statement recently made by the said company of the annual amount of tolls, of the expenses of repairs, and of the nett profits arising from the

tolls, be true; which statement, if it be not admitted, will be exhibited by your orator at the hearing.

The directors of the company have sometimes pretended that they were authorized to execute these mortgages by certain resolutions of the stockholders of the said company. One of which said resolutions they say was adopted at the regular annual meeting of the stockholders on the first Monday of June, eighteen hundred and twenty-six; and the other of which said resolutions they say was adopted at the regular annual meeting of said stockholders on the first Monday of June, eighteen hundred and thirty-two; but your orator denies the existence of such resolutions, and if there were such, he utterly denies that any legal notice was given to the stockholders either of the object, time, or place of said meeting; and he requires of those defendants, and each of them, to state in their respective answers all their knowledge herein, and particularly of the place where said meetings were held, and of the notice of the object and place of such meetings. And your orator further avers, that the reason given by the said company for the execution of new mortgage deeds in eighteen hundred and thirty-two, reciting the execution of former mortgage deeds as aforesaid, is that such former or original mortgage deeds were void. And your orator avers, that for this reason, without consulting the stockholders, and without ever any request being made by the majority of the loan-holders, the directors of the said company, of their own authority and motion, executed the new mortgages, bearing date the seventeenth day of November, eighteen hundred and thirty-two, and the the first day of January, eighteen hundred and thirty-three, as aforesaid. And your orator further charges and says, that at the said meetings when propositions were made to the stockholders for loans, many stockholders were absent; others present dissented from and objected to such propositions; and others were represented at the said meetings by proxy only. The powers of attorney, under which the persons representing them acted on those occasions, having only authorized such persons to vote for directors for such stockholders, and in their names. Among these at the said meetings, if any person represented the stock of the United States, which then held four hundred and fifty thousand dollars of the said capital stock; or of the State of Maryland, which then held fifty thousand dollars of the said capital stock; or of the State of Delaware, which then held twenty-five thousand dollars of the said capital stock, it will be seen by reference to the authorities given by such last mentioned stockholders, and by reference to the laws of the United States, and of the said States, and to their several and respective constitutions, that it was absolutely impossible that any person could have been present at the said meetings duly authorized to represent either the United States, the State of Maryland, or the State of Delaware, either on the question whether money should be

borrowed to cut the said canal, or whether their stock, or the avails and profits thereof, should be incumbered, sold, or disposed of, by mortgage or otherwise, for the repayment of money so borrowed.

And your orator avers, and now charges it to be true, that the stock of the United States, and of the said States of Maryland and Delaware, added to the stock of those stockholders who were absent at the said meetings, without due notice of the object of the said meeting, and to the stock of those stockholders who, being present at the said meeting, objected to, and dissented from, the propositions then made to borrow money to complete the said canal, far exceeded in amount all the stock of the stockholders present and represented at such meetings, legally voting for the said propositions. And your orator further charges, that the whole amount of the capital stock of the said company greatly exceeds the original capital of five hundred thousand dollars; and he believes the amount of said stock subscribed, and paid in, exceeds a million of dollars. But he is ignorant of the said amount, and for a discovery thereof he demands of those defendants, and each of them, full, true, and perfect answer of such amount, and of all their knowledge thereof; and he requires of the said company, and of the President thereof, to set forth a particular statement, in their respective answers, of the whole amount of stock subscribed, and of the whole amount of stock paid in; with a list of all the original stockholders, and the amounts by them respectively subscribed and paid, and the times when each original subscription was made and paid; with a list of the present stockholders of the said company, and the amounts of stock by them respectively held; also, lists of the stockholders at the time of the annual meetings, when it is pretended that propositions to borrow money were made and passed, and the amount of stock then held by each and every stockholder.

Your orator further charges and requires a specific answer from each of these defendants on this point: That there never was any proposition made at any meeting of the said stockholders, nor was any resolution passed to mortgage the said canal, or any of its tolls, for the purpose of securing payment of money borrowed, or to be borrowed, to cut the said canal, or for any other purpose.

Your orator further avers, and so the fact is, that the said mortgages were executed without any vote or resolution of the board of directors to authorize their execution; and if there were any such vote or resolutions, he requires it to be set forth by these defendants in their respective answers. Your orator further avers and charges, that the said loans were not only negotiated and contracted for by the said directors without authority from the stockholders, but after a fraudulent notice, which was made after the meeting of the stockholders, and which, while it disclosed the pretended object of the company to borrow money, in only two newspapers, and those printed in the city of Philadelphia only, gave but twenty-eight days'

notice in all of the intention to borrow, and a notice of less than half that time that any mortgage was to be given to secure the sums borrowed.

And your orator further charges, and so the fact is, that the said trustees herein before mentioned, and each of them, had full notice of the existence of your orator's claim long before the execution of the said mortgages. That they were apprized of the foregoing facts, in this bill stated, which had transpired before the seventeenth day of November, eighteen hundred and thirty-two; that one of them was the attorney and counsellor of the said company, and had seen, and was fully aware of the complainant's contract with the said company; that he was counsel for the company in the suit so brought in Philadelphia, as aforesaid, in January, eighteen hundred and twenty-six, and had given an opinion on the said contract before the thirtieth of September, eighteen hundred and twenty-five; that he was fully apprized of the nature and extent of the claim of the complainant before the seventeenth of November, eighteen hundred and thirty-two. That another one of the said trustees is substantially, if not nominally, a loanholder to a large amount; and that all of them were apprized of your orator's claim upon the said company, before the execution of the said mortgage deeds.

And your orator charges, that the existence of his said claim on the said company, was matter of public notoriety long before the execution of any of the said mortgage deeds; that the fact that suit had been brought for it, was well known to every such loanholder long before the seventeenth of November, eighteen hundred and thirty-two, and before any loan was negotiated or contracted for by the said company.

And your orator, charging expressly that the said directors of the said company were, and have been, and still are, interested in the said loans and mortgages, further avers, and says, that the said mortgages are utterly and absolutely void, as contravening the intention of the Legislatures of the several States which incorporated the said company, and made without any authority from either of them.

Your orator further charges, that each of the said directors knew that, by the terms of the said mortgages, the tolls necessary to defray all the expenses of the said corporation, as well as those necessary to keep its canal works in repair, had never been mortgaged, and were expressly excepted out of the said mortgages for the payment of such expenses. They knew that, among the expenses of the said corporation, was your orator's charge on the said corporation, and claim as a contractor; and, on the twenty-fifth of January, eighteen hundred and thirty-four, they had full legal notice of the liability of such tolls to pay your orator's said judgment and costs, in preference to any sum of money secured by the said mortgages. Nevertheless, since that day, as well as before it, they have

appropriated all the said tolls to other purposes than that of paying your orator, and have fraudulently applied much of the said tolls towards payment of their own debts against the said company, so created, as aforesaid, and towards payment of the loans in which they have been interested. And your orator further showeth unto your honor, that, at the time of the execution of the first indenture of mortgage, on the eleventh of July, eighteen hundred and twenty-six, the said canal was then in progress, and unfinished, and indeed not more than half completed; and that the said canal was not completed until about the commencement of the year eighteen hundred and thirty.

And your orator further showeth unto your honor, that the exhibits accompanying this bill, and filed therewith, marked with the letter B, are true copies of the reports of the said directors to the stockholders, at the general annual meetings of the latter, and of the proceedings of the stockholders therein, from the year eighteen hundred and twenty-four to the year eighteen hundred and thirty-five, both inclusive; and he says that the said exhibits, marked B, were published by order of the said company; and he prays that the same may be taken as, and for, a part of this his bill, and that the said defendants may be required to admit the same, or to annex true copies of said reports to their answer.

And your orator further showeth unto your honor, that pending his aforesaid action against the said company, and but a few days before the rendition of the said judgments in his favor, a judgment was confessed against the said canal company in favor of the president, directors, and company of the Bank of the United States, (a corporation incorporated by Congress,) for a pretended real debt of two hundred and forty thousand dollars, or thereabouts; and your orator refers to exhibit C as a part of his bill. This judgment was confessed in the Circuit Court of the United States for the Delaware district, as your orator hath understood, and he so charges. He charges that the said judgment, whensoever entered, was utterly fraudulent and void as against him. He charges that the said judgment was voluntarily given without any legal consideration to support it; that, if given for any consideration whatever, it was for *money borrowed* by the said canal company to pay the interest on the mortgages or loans herein before mentioned, and that the object for which it was so borrowed by the said canal company was known at the time of borrowing the same, and before the confession of the said judgment, to the directors of the Bank of the United States. He submits to this honorable court that the said loan, if made by the said the president, directors, and company of the Bank of the United States, was in contravention of a portion of their own charter, is entirely unauthorized by the charter of the said canal company, and, as against your orator, is utterly and absolutely null and void. He denies the existence of any legal warrant for the entry of such

judgment, and demands the production of it, if there was any, by the said defendants. Your orator further charges that the said last mentioned loan was originally negotiated on the security of certain private individuals only, and he demands of these defendants a full disclosure of the names of such individuals, the nature and extent of their respective liabilities, and the character and description of the notes or other securities by which any individual or individuals may have become responsible to the said bank for the said last mentioned loan, or any part thereof. Your orator further charges, that two thousand five hundred shares of the capital stock of the said canal company were transferred to the said the president, directors, and company of the Bank of the United States, or in trust for them as a security for the said pretended loan, before the entry of the said judgment; that the said transfer was made by the creation of so many new shares of stock in the said canal company, on the authority of the directors only, without receiving from the said bank any other consideration therefor than is herein before mentioned; that the said the president, directors, and company of the Bank of the United States accepted the said shares of stock, and became and were liable as stockholders in respect of their stock to the payment of your orator's demand on the said canal company; and that, by collusion between the directors of the said bank and the directors of the said canal company, the liability of the former as a stockholder, in respect of its stock, *and* converted into a claim or judgment intended to overreach the claim of your orator on the said canal company, while the trial between your orator and the said canal company was actually progressing before a jury, in the county of New Castle, and but a few days before the rendition of the verdict of the jury, and the entries of judgment thereon. And your orator denies that this loan was ever sanctioned by any vote of the stockholders of the said company; and, if it be pretended that it was so sanctioned, your orator prays a discovery of it, and demands of these defendants to annex it to their answers, with a statement of the time and place of such meeting of stockholders, with a copy of the notice of such meeting given to the stockholders before it was held, and also a copy of the notice to the public of the negotiation of such loan, or inviting such loan. Your orator expressly charges that no notice was given to the public at the time of the negotiation of this pretended loan to ascertain whether money could be obtained for the said canal company on better terms or not; and that no notice of the intention of the directors of the said canal company thus to borrow money of the said bank, without notice to other banks or to other lenders of money, was ever given to the said stockholders; nor was any notice given either to the public or to the said stockholders, in meeting assembled, of any intention of the said directors to secure the said loan by judgment; on the contrary, the whole matter was privately transacted, after a short correspondence be-

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tween the president of the said bank and the president of the said canal company; and your orator charges that there is not even a vote of the board of directors of the said canal company to sanction the unjust and fraudulent confession and entry of said judgment; and, if it be pretended that there was any such vote, your orator prays a discovery thereof, and that a true copy of the original minutes of the same may be annexed by these defendants to their respective answers. Your orator further charges, and so the fact is, that the said pretended debt of the president, directors, and company of the Bank of the United States had been previously secured in and by the mortgages aforesaid, with privilege to the said bank to convert such pretended loan into stock, at par, at their option, at the expiration of the time when the loan was payable; that by the terms of the mortgages, securing the said pretended loan made by the Bank of the United States as aforesaid, the same was not payable until the first day of January, eighteen hundred and forty, or the first day of January, eighteen hundred and forty-five; that one of the directors of the said canal company, in private conversation with a director of the said bank, made the first advance or proposition for the confession of the said judgment; that in consequence of such private proposition, and a suggestion that it would be well for the president of the bank to address a letter to the president of the canal company on that subject, requesting a judgment in favor of said bank, a private correspondence between the two presidents ensued, which resulted in the entry and confession of such judgment. This judgment was confessed in contemplation of the insolvency of the said canal company, while the said bank held the security of two thousand five hundred shares of the capital stock as aforesaid, and also the security of the mortgages above mentioned. It was a judgment confessed for the very purpose of defrauding your orator.

And your orator further showeth unto your honor, that on the twenty-second day of January, eighteen hundred and thirty-four, another judgment was confessed, at the suit of the Philadelphia Bank against the Chesapeake and Delaware Canal Company, for the pretended real debt of sixteen thousand dollars, with interest thereon from the twenty-second day of January, eighteen hundred and thirty-four. And your orator avers and charges, that this judgment also is a gross fraud as against your orator; that it was confessed, without sufficient warrant or authority for that purpose; and therefore, if there be any, he requires the production of said authority or warrant. This judgment was entered in the superior court of the State of Delaware, in and for the county of New Castle, while the trial of your orator's aforesaid action against the said canal company was still depending, even after the charge of the court to the said jury, in favor of your orator, had been delivered to the said jury, and twenty-four hours after the said jury had retired

to their room for the purpose of deliberating upon their verdict. At the time of the entry of said last mentioned judgment, the said Philadelphia Bank, by their agents and their attorney, well knew that the recovery of your orator was inevitable. Their said judgment was entered, without any legal consideration to support it; and if it be now pretended that there was any consideration for it, your orator requires of the said bank, and these defendants severally, to state it fully, with all circumstances, in their answer.

Your orator has heard and charges, that the said the Philadelphia Bank has been incorporated by an act of the Legislature of the State of Pennsylvania, and that there is such a corporation; but he further avers, that the directors of the said bank have pretended and asserted that the said judgment was confessed, to secure a sum of money borrowed, of the amount of the said judgment, by the said canal company, of the said last mentioned bank, for the purpose of paying interest on the loans so secured by mortgage as aforesaid. And your orator charges and avers, that if any such loan was made by the said bank to the said canal company, it was never sanctioned by any vote or resolution of the stockholders of said canal company, nor even by a vote of the board of directors of said canal company; nor was any judgment ever authorized, by any vote or resolution of the said stockholders, to be confessed against the said canal company; nor was any notice given, prior to any meeting of the stockholders of said canal company, that the object of any such meeting was to consider the expediency of borrowing money.

Your orator avers, that the real debt mentioned in the judgment was also secured by some of the mortgages aforesaid—that it was also secured by personal responsibility of individuals; and he requires of these defendants a full statement of all the money transactions, and of all accounts and dealings by and between the said canal company and the said last mentioned bank; and he avers that said last mentioned judgment is fraudulent and void as against him. And your orator, having thus shown unto your honor all the claims with which he is acquainted, by which it is sought to render his own judgments aforesaid ineffectual and altogether worthless, avers, that since the rendition of his judgment, and indeed since the said canal was opened for navigation, the directors of the said company have wilfully, and without warrant of law, contrary to the plain and evident meaning of their charter, applied the profits arising from the tolls of the said company to the aforesaid mortgages, or to the said judgments of the said banks, in gross fraud of the rights of your orator, who was and is entitled to the same. And to justify their conduct in borrowing money as aforesaid, and attempting to give liens, by way of mortgage or judgment, on the tolls of the said company, the said directors have pretended and asserted that the stockholders of the said canal company had

authorized the said loans, mortgages, and judgments, and have pretended to show that, at the meetings of the said stockholders, held on the first Monday of June, eighteen hundred and twenty-six, and on the first Monday of June, eighteen hundred and thirty-two, certain resolutions were passed by a majority of the said stockholders, which warrant them in what they have done. But your orator denies these allegations, and further says, that five hundred shares of stock were not present and represented at either of said meetings, on either of the questions of loan or no loan, mortgage or no mortgage, judgment or no judgment; that there was no legal notice given to the stockholders, that the questions aforesaid were to be considered at either of said meetings; that persons were present at those meetings, voting as attorneys in fact of other stockholders, who had never been empowered to vote on either of the aforesaid questions. And your orator requires the production of all powers of attorney or proxies, under and by virtue whereof any person present at either of said meetings voted for any loan, or for any resolution to borrow, or to sanction the borrowing of money by the said canal company—with the names of all stockholders voting for and against any such resolution, and the value of their respective stocks. But your orator avers, and hopes fully to sustain the point before your honor, whenever an occasion shall offer, that there was no power in the said stockholders, nor in the said directors, to borrow money for the use of the said canal company; and that, had every stockholder and director concurred in resolutions to borrow money for the purpose of cutting said canal, or for any other purpose, without the consent of the Legislature, such a resolution would be absolutely null and void.

And your orator avers, that by the third section of the charter of said company, he was entitled to be paid out of the subscriptions and tolls; that he hath a right to an account thereof; that the money arising from the subscriptions to the capital stock of said company hath been fraudulently wasted and misapplied by the said directors; that the money arising from the mortgages and judgments aforesaid, and the money so borrowed as aforesaid, and the money arising from the tolls of the said company, have not been expended for the benefit of said company, according to their charter, but have also been wasted and fraudulently misapplied. And your orator prays a particular account of the expenditure of all such moneys, setting forth each item of charge, with the date thereof, the separate amount paid to each person, and a full statement of all circumstances connected with every charge.

And your orator charges and avers, that the said directors of the said canal company, or some of them, were stockholders of the Bank of the United States and of the Philadelphia Bank aforesaid, or one of said banks to a large amount, and some of said directors were also directors of one or both of said banks at the time of confessing

judgment as aforesaid in favor of said banks; and he prays that these defendants may answer this charge particularly, showing the amount of interest which said directors had in said banks, and each of them, and which of said directors were also directors of said banks or either of them. He also avers and charges, that said directors as loan holders have received large portions of other loans by way of interest or part payment of their own claims as loan holders. He avers also, that said John Reed is the president of the said Philadelphia Bank, and a director thereof. And your orator avers, that the president, directors, and company of the Bank of the United States, did cause a writ of fieri facias attachment to be issued out of the circuit court aforesaid on their judgment against the said canal company, and did cause to be taken in execution, levied upon, and sold, a large quantity of wood, dredging machines, and other articles belonging to the said company of the value of six thousand dollars. Many of those articles were removed into the State of Maryland a few days before your orator recovered his judgments, and pending his trial, for the express purpose of preventing your orator from executing the same by a fraudulent collusion between the agents of the said bank and of the said canal company; the property so levied upon, was sold and purchased for about one hundred and fifty dollars, and the said canal company hath ever since remained in possession thereof, though by cover between them, the said bank is always by them represented to be the owner of said property. And your orator further showeth unto your honor, that the names of the directors of said company from time to time since the same commenced operation, are all fully set forth, and correctly stated, in the printed copies of the reports of said directors before mentioned, marked B, to which your orator refers as a part of this his bill of complaint. That one of the said directors, to wit: Silas E. Weir, died on or about the fifteenth of May, in the year of our Lord one thousand eight hundred and twenty-eight, intestate, and that on or about the twenty-second day of May, in the year last aforesaid, letters of administration of all and singular the goods and chattels, rights and credits of the said Silas E. Weir, deceased, were duly granted by the proper authority in the city of Philadelphia, in the State of Pennsylvania, to John S. Henry and Thomas Astly of the said city, as administrators of the said deceased; and that the paper writing hereunto annexed and exhibited, marked with the letter D, contains a true copy of the certificate of the death of the said Weir, of the renunciation of the next of kin, of the bond of the said administrators, who as your orator charges, gave bond and security according to law, and of the account passed by the said administrators of their said administration, from which it will appear, and your orator charges the fact so to be, that the said Silas E. Weir was a large loan holder in the loans aforementioned, and that since his decease, his administrators have received large sums

of money on account of instalments on the said loan out of the tolls of the said the Chesapeake and Delaware Canal Company; which, together with other such sums received by the said Weir in his lifetime, a full account of all which is hereby demanded from the said administrators, is rightfully due to your orator. And your orator further shows, that on or about the seventh day of March, in the year of our Lord one thousand eight hundred and thirty-four, Robert Wharton, a citizen of Pennsylvania, and another of the said directors in the said exhibit D mentioned, departed this life in the city of Philadelphia, having in and by his last will and testament, duly executed in writing in his lifetime, constituted his son, Robert Owen Wharton and the said Robert M. Lewis, his executors, who having proved the will in due form of law, took upon themselves the execution thereof; that said Robert Owen Wharton hath since died, and said Lewis is now the sole surviving executor of said Robert Wharton, deceased; that Levin Gale, another director of said canal company, died intestate on or about the 13th December, 1834, being at the time of his death a citizen of the State of Maryland, and county of Cecil, and that Harriet Gale of said State, hath there in due form of law taken out letters of administration on his estate, and is his administratrix; that George Gillaspie, of Philadelphia, another of said directors, died on or about the 2d October, 1832, having in and by his last will and testament appointed Mary Gillaspie, his widow, sole executrix, who is now in due form of law his executrix, and resides in Philadelphia, and has taken on herself the burthen and execution of said will, after proving the said will according to law.

And your orator avers, that large sums of money have been received by the said Robert Wharton, and by his personal representatives since his decease, on account of interest on the said loan, part of which was held by the said Robert Wharton; and your orator charges, that the estate of the said Weir, and also the estate of the said Wharton, are amply sufficient for the payment to him of the sums so received as aforesaid. And your orator further showeth unto your honor, that he entered into another contract with the said company, by reason whereof, and of the conduct of the said company, he hath suffered still further wrong and oppression—for so the fact is, that on or about the 13th day of April, A. D. 1824, an agreement was made between the said John Randel, junior, party of the first part, and Robert Wharton and Robert M. Lewis, for the Chesapeake and Delaware Canal Company, party of the second part, wherein and whereby it was amongst other things contracted and agreed by your orator, to construct the tide lock of the Chesapeake and Delaware Canal, on the river Delaware, near Newbold's landing; and by and in behalf of said company, it was agreed that your orator should be paid by said company certain prices for his work as it progressed; but for greater certainty as to the contents of

the said contract, your orator refers to the original contract herewith filed and exhibited, and marked with the letter X, and he expressly charges and demands of these defendants to say, on their several and respective oaths, or in answer hereto, that the paper writing contained in said exhibit is the true original contract by and between your orator and the said Robert M. Lewis and Robert Wharton, acting as attorneys, in fact by and in behalf of the said company; and he charges that the said Lewis and Wharton were specially constituted, and fully empowered, by said company to make said contract; that they so represented themselves to your orator at the time of entering into said contract; that the said article of agreement and the schedule thereto annexed constitute the said contract, and that each of them was duly signed, sealed, and delivered by your orator, and by the said Lewis and Wharton acting respectively as aforesaid. Your orator entered upon and progressed in his work as a contractor under said contract, and in pursuance thereof constructed the said tide lock. Nevertheless, the said company did refuse to pay him for his said work, and now stands indebted to him on account of work done under the said contract in the sum of sixty thousand dollars, lawful money of the United States of America. Yet, when your orator brought suit in the superior court of this State to recover the same, the said company, the said Robert M. Lewis being then the president thereof, pleaded non est factum, denied that the said contract was the deed of the said company, and caused your orator to be non-suited, because the seal of the said company was not affixed to the instrument of writing; but your orator charges, that the said company did ratify and adopt the said contract, and has received the benefit of his labor under the said contract, and hath ever since been, and now is, using the said tide lock so built by your orator as aforesaid. He charges the certificates for work done, made by Benjamin Wright, the engineer of the said company, and by Henry Wright another engineer of the said company, and by other engineers of the said company, were fraudulent and false, and calculated to injure and defraud your orator; and that the said company hath never paid your orator for the work done, and certified by the engineer as the work progressed. And your orator prays an account of the work really done by him on account of said tide lock, and that the several directors of the said company shall answer, on their several oaths, as to the amount due to your orator on account of work done on said tide lock; and he charges that the said canal company hold two bonds against him for a sum of about $30,000, and that he is entitled to set off his claim on said lock contract against said bonds.

And your orator further showeth unto your honor, that he hath frequently called upon the said defendants, and each of them, in a friendly way, of and concerning the premises, requesting payments of his said judgments, and of the money due him on account of

work done on said tide lock, out of the tolls and subscriptions of the said canal company. But now so it is, may it please your honor, that the said defendants, combining and confederating with each other, and with divers persons to your orator unknown, whose names, when discovered, he prays may be herein inserted, with apt words, to charge them, and craftily and subtly contriving to defraud your orator in the premises, have utterly refused to pay your said orator; and the directors of the said canal company have removed their toll houses out of the State of Delaware into the city of Philadelphia, for the express purpose of preventing your orator from collecting any portion of the said tolls, and have repeatedly caused your orator to be informed that he should receive no portion of said tolls until the said mortgages and judgments in favor of said banks are satisfied; declaring, at the same time, that the tolls of the said company are incumbered to the value of the said canal, which, if the said loans are valid, your orator charges to be true.

In tender consideration whereof, and for as much as a discovery of the matters hereinbefore mentioned is necessary to enable your orator to avail himself of his said judgment; and for as much as an account of the tolls and subscriptions received by the said company, and of the payments which have been made of them, is necessary to effect justice; and for as much as your orator is entirely remediless in all the premises, except in a court of equity, where matters of this nature are properly cognizable and receivable. To the end, therefore, that the Chesapeake and Delaware Canal Company aforesaid, under their corporate seal, and that Robert M. Lewis, president, and Isaac C. Jones, Henry D. Gilpin, John Hemphill, William Pratt, William Phillips, John C. Smith, Henry Cope, Thomas Biddle, Algernon J. Roberts, John K. Kane, Benjamin W. Richards, James C. Fisher, Samuel Grant, Thomas P. Cope, Thomas Fassitt, Ambrose White, and Paul Beck, junior, who have been directors of the said company, since the commencement of operations of the said canal company, and who reside in the city of Philadelphia, in the State of Pennsylvania; John Wilson, lock-keeper of the said canal, at the east end thereof, in the State of Delaware; Robert M. Lewis, surviving executor of Robert Wharton, deceased, Mary Gillaspie, executrix of George Gillaspie, deceased; both said executors reside in Philadelphia; and Harriet Gale, administratrix of Levin Gale, deceased, said administratrix residing in the State of Maryland; the president, directors, and company, of the Bank of the United States, (under their corporate seal,) Nicholas Biddle and Matthew Newkirk, directors of the said bank, residing in Philadelphia, and the said mortgagees and trustees, James Parker Norris, Nicholas Biddle, Horace Binney, John Read, and Joseph Hemphill; and the said John S. Henry and Thomas Astly, administrators of Silas E. Weir, all of whom reside in Philadelphia aforesaid; and the said Samuel H. Hodson, of the State of Delaware; and William Linn Brown, of the State of Pennsylvania; and the Philadel-

phia bank aforesaid, (under its corporate seal,) may each, upon his several corporal oath, full, true, and perfect answer make, to all and singular, the premises, as fully and particularly as if the same were here again repeated and interrogated, and especially whether your orator did not obtain such judgment against the said canal company, as has been hereinbefore stated; and whether the complainant's exhibit A is not a true copy of the same; and whether the said judgment doth not remain wholly unsatisfied; and whether the said canal company did not make the said mortgages hereinbefore mentioned; and what was the true consideration for them, and each of them, and how much, if any thing, is due upon the same; and what is the annual amount of tolls collected upon the said canal, and of the expenses of collection, and of keeping the canal in repair; and what amount of tolls has been collected since the twenty-fifth day of January, eighteen hundred and thirty-four, and where they have been collected, whether at the said canal or elsewhere, and how they have been applied; and that the said canal company, and those who have been directors thereof, since the twenty-fifth day of January, eighteen hundred and thirty-four, may disclose a particular account of the said tolls, how much of the money arising therefrom each of them hath received, on account of any loan or other claim against the said company. That the defendants may also answer, whether there was not such contract between your orator and said canal company, as is stated in his said bill, or in the pleadings in the exhibit marked A; whether said company was not incorporated, as stated in said bill; whether the part of the canal, contracted to be cut by your orator, embraced about three-fifths of said canal, and was all within the State of Delaware, or how much thereof; whether your orator commenced work, and was discharged, as is stated in said bill; whether the exhibit marked A contains a true copy of the docket entries, declaration, pleadings, and judgments, in your orator's action against the said canal company; whether your orator brought an action in Philadelphia against the said canal company, and when, and for what causes, or for what alleged causes of action; and whether that action was discontinued or struck off, or a non pros. entered therein, and for what reason; whether your orator's action in this State, against the said canal company, was transferred to the Superior Court, from the court of common pleas, as is stated in said bill; whether the said directors of the said company have not caused their toll houses to be removed from the State of Delaware to the city of Philadelphia, and when, and for what reason, and how much toll has been collected in Philadelphia; whether the board of directors did pass such resolution, ordering tolls to be collected in the State of Maryland, as stated in said bill; whether your orator did cause such attachment to be laid in the hands of the collector of tolls at the Delaware tide lock, in this State, as is for this purpose alleged in said bill; whether the said collector received tolls after the service, and before the return

of such attachment, and how much; and whether, as garnishee, he made such answer as is stated in said bill; and whether that answer was not made under the advice of certain directors of said company, and what directors; whether the said toll gatherer hath accounted to the said company for the money, by your orator so attached, as aforesaid; who were the directors that caused the toll houses to be removed to Philadelphia; how much of said stock was subscribed on the first day of October, eighteen hundred and twenty-five; and how much on the first Monday of June, eighteen hundred and twenty-six; and how much had been paid in, on these days respectively, on account of said stock; who were the stockholders, and what were their respective interests and shares, on each of said days; how much money was received on account of subscriptions to stock, after the 1st of October, 1825.

What sums of money had been borrowed for the use of said company, and for what purpose? How were such sums originally secured, and who was originally responsible therefor, and how are such sums now secured to be paid, and who and what is now responsible therefor? Set forth a copy of each of the mortgages and judgments herein before mentioned, the original mortgage dated in July, eighteen hundred and twenty-six, and all subsequent thereto. State the contract between the loanholders and the canal company fully. What was the extent of interest of each and every of the said directors, whether held in his or their own name or names, or in the name or names of any other person or persons in trust for him or them? What is now the amount or extent of interest of each and every of the directors of the said company, and by what mortgage, judgment, or other security, is the same secured to be paid? What has been the extent of the speculations of said directors, respectively, in the said loans, or any of them? State the names and amount of interest of each of the original loanholders, in every instance, and the names and quantity of interest of all the present loanholders. What was the sum of money actually obtained on the security of each of the said mortgages, and at what times precisely was the said money paid? What is the amount of the annual nett profits of the said canal? By what authority were those loans obtained? What notice was given to the stockholders, and in what form, and what notice was given to the public before the mortgages were executed or the judgments confessed? Who were the loanholders that requested the execution of the mortgage deeds dated 17th November, 1832, and the first day of January, 1833? What stockholders were present at any meeting or meetings when a proposition was offered, for their adoption, to borrow money? Who voted for, and who against, the proposition? Who objected to it? How many shares of stock were present and voting at such meeting or meetings? To whom did they belong? How many shares of stock were voted by proxy at such meeting or meetings, who voted them, and to whom did they belong? Annex copies of all

powers of attorney under which any shares of stock were voted by proxy at any such meeting or meetings. What is now the amount of the capital stock of said canal company? What is the interest of each stockholder therein, when was it subscribed, and when was it paid in, and what is the interest of each of the said directors therein? Did the stockholders ever pass a resolution, at any of their meetings, to mortgage their canal or any of their tolls, or to confess any judgment thereon? If there ever was any vote or resolution of the board of directors to authorize the execution of any such mortgage, or the confession of either of the said judgments, annex it to your answer. In what newspapers was any notice given to the stockholders, at any time, that the object of their meeting was to borrow money? And in what newspaper, and at what time, was any notice given inviting each or any of the aforesaid loans? Had not the mortgagees, and trustees, and loanholders, notice of your orator's claim before the execution of the said mortgages? And had not you some, and what, notice thereof? Are not the said mortgages and judgments void? How much of said canal was completed on the first of October, eighteen hundred and twenty-five, and when was the said canal finished and opened for navigation? How much of said canal was finished on the 11th July, 1826, and how far had the work then been progressed in? Are the exhibits accompanying this bill, and filed therewith, marked with the letter B, true copies of the reports of the directors to the stockholders of the said canal company, at the general annual meetings of the latter, and of the proceedings of the stockholders approving the same, from the year 1824 to the year 1835, both inclusive? And were the pamphlets exhibited, marked B, published by order of the said company? Was such judgment confessed against the said canal company in favor of the president, directors, and company of the Bank of the United States, as is herein before alleged? And for what real debt, and at what time, and in what court? Was the said judgment for money borrowed, or for what? And what was the original consideration upon which the same was founded? Annex a copy of the warrant for the confession of such judgment to your answer. What was the whole contract between the said bank and the said canal company? State all the securities which the said bank hath ever had for the said debt, or any part thereof. For what purpose was the said loan obtained from said bank, and to what uses was it specifically applied? Under what authority was the said loan made, and on what notice? How much of the money loaned by said bank was paid to the directors on account of their shares or interests in the former loans, either by way of interest or principal? How much of said bank's claim was secured by any, and which, of the mortgages aforesaid? Was such judgment confessed to the Philadelphia Bank by the Chesapeake and Delaware Canal Company, and for such sum, and at such time, and under such circumstances, as for this purpose is herein before

alleged? What was the consideration to support said judgment? Was it for money loaned, and for what object, and how was the money applied? Annex to your answer a copy of the warrant or authority for the confession of such judgment. By what authority, vote, or resolution was the said judgment confessed? Was not the real debt, secured by said judgment, previously secured by mortgage, or how? State all contracts between the said bank and the said company relating to said debt. Who were the directors of the said canal company from the year 1824 to the year 1835, both inclusive? When did Silas E. Weir die, and who are his personal representatives? Is the paper marked D a true copy of the original papers of which it purports to be a copy? To whom and how have the subscriptions and tolls of the said company been applied and paid, and at what time, and for what purposes? State the names of the directors of the said canal company, who were directors of either of the banks aforesaid at the time of the confession of such judgments in favor of said banks, or either of them? How many shares of stock had each or any of the said directors in the said banks, or either of them; and what was the amount of their interest in said banks respectively? Did the president, directors, and company of the Bank of the United States cause a fi. fa. attachment to be issued on their said judgment, and such proceedings to be had thereon, and such sale, as is for this purpose alleged in said bill? Has the canal company, ever since the sale, been in possession of the property sold by virtue of such execution? Are the charges in this bill, in regard to the contract for the making of the Delaware tide lock, true? Is the canal company indebted to complainant on account of said tide lock, and how much?

And that the said deeds of mortgage may be brought into court, and cancelled, and declared null and void, and that your orator may have full relief against the said the president, directors, and company, of the Bank of the United States, and against the said Philadelphia bank, and against their said judgments, either by injunction, or otherwise, as to your honor shall seem meet and proper; and that the trustees and mortgagees, aforesaid, may be enjoined and restrained from proceeding on the said mortgages; and that a receiver may be appointed to collect all tolls which the said company are entitled to demand and receive from persons having the direction of all vessels which may pass westwardly through the said canal, to be stationed at the eastern termination of the said canal, in New Castle county, in the State of Delaware; and that the said tolls, when collected, may be brought into this court, and applied, under the direction of this court; and that the said tolls, when collected and brought into court, may be applied, after deducting so much therefrom as may be necessary for the repairs of the said canal, and for maintaining and preserving the same as a common highway according to their charter, and the cost of collection, to the payment of your orator's said judgment; and that the said com-

pany may be compelled to file in the honorable court statements and estimates, under the oaths of the directors thereof, and under the corporate seal of the company, of the sums necessary, from time to time, for repairs of the said canal, and the works of the said company; and that those who are, and have been, directors of the said canal company, may be compelled to pay to your orator all such sums of money as they have received on account of their pretended claim against the company, out of the money arising from the subscriptions and tolls thereof; and that the directors of said company may be compelled to account to, and with, your orator, of and concerning all moneys arising from such subscriptions and tolls, and to pay over to your orator all money remaining due on account thereof; and at the termination of this suit, your honor may decree a sale of all the real estate of the said canal company, and of all their interest, right, claim, and title of, in, and to the said canal, and the tolls thereof, and all the appurtenances, tenements, and hereditaments thereunto belonging, or in anywise appertaining, for the purpose of paying your orator's said judgments; and that, by a decree of this court, the said canal company may be compelled to pay to your orator the amount of his said judgments, with interest thereon, and costs, with costs in this court. And that the said canal company may be decreed to account to, and with, your orator, of and concerning all work done by your orator on the Delaware tide lock, or under, and by virtue of, a contract herewith exhibited, marked with the letter X, and of and concerning all moneys due to your orator, for or on account of the said work, or the said contract; and may be decreed to pay to your orator all such sum or sums of money as may be found due to your orator, or that such money may be discounted and deducted from their claims on him. And that your orator may have such further and other relief in the premises as the nature of his case may require, and to your honor may seem meet and proper, according to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orator a writ, of the said State of Delaware, of subpœna, to be directed to the sheriff of Kent county, aforesaid, commanding him to summon the said Robert M. Lewis, president, and Isaac C. Jones, Henry D. Gilpin, John Hemphill, William Platt, William Phillips, John C. Smith, Henry Cope, Thomas Biddle, Algernon J. Roberts, John K. Kane, Benjamin W. Richards, James C. Fisher, Samuel Grant, Thomas P. Cope, Thomas Fassitt, Ambrose White, and Paul Beck, jr., directors of the said canal company; John Wilson, lock-keeper of the said canal, at the east end thereof; the President, Directors, and Company, of the Bank of the United States; Nicholas Biddle and Matthew Newkirk, directors of said bank; and the said mortgagees and trustees, Joseph Parker Norris, Nicholas Biddle, Horace Binney, John Read, and Joseph Hemphill; and the said John S. Henry and Thomas Astly, administrators of Silas E. Weir, deceased; and Robert M. Lewis, surviving executor of Robert Whar-

ton, deceased; Mary Gillaspie, executrix of George Gillaspie, deceased; Harriet Gale, administratrix of Levin Gale, deceased; and the said Samuel H. Hodson, and William Linn Brown; and the Philadelphia bank, aforesaid; and the Chesapeake and [Delaware] Canal Company; that they, and each of them, on a certain day in said court to be appointed, and under a certain penalty therein to be limited, be and appear before your honor in this honorable court, then and there to answer all and singular the foregoing charges and allegations; and to stand to, and abide, such order and decree in the premises as to your honor shall seem meet, according to equity and good conscience; and that your honor will grant to your orator such other and further process, orders, and rules, as may be necessary to compel the appearance of the said defendants for the purpose of answering this bill of complaint. And your orator will ever pray, &c.

JOHN RANDEL, Jr.

JOHN M. CLAYTON,
Solicitor for Complainant.

KENT COUNTY, *ss:*

I certify that the aforegoing is a true copy of the original bill in chancery, in the case therein mentioned, on file in the court of chancery of said county.
[L. S.]

In test: veritatis.

Jan. 17, 1836. J. L. HARPER, *Reg. C. C.*

I hereby certify that Joseph L. Harper, who has signed the above certificate, at the time of the date of the same, was the Register of the Court of Chancery of the State of Delaware, in and for the county of Kent.

In testimony whereof I have hereunto set my hand, this twenty-second day of April, A. D. 1839.

KENSEY JOHNS, Jr.,
Chancellor of the State of Delaware.

To the honorable Theoderick Bland, esquire, Chancellor of Maryland.

Humbly complaining, showeth unto your honor, your orator, John Randel, junior, formerly of the State of New York, but now of the State of Delaware, civil engineer, that heretofore, to wit, on or about the twenty-sixth day of March, in the year eighteen hundred and twenty-four, your orator made and entered into a contract in writing with the Chesapeake and Delaware Canal Company, (a company incorporated as well by the State of Maryland as by the State of Delaware,) and to whose charter, by the State of Maryland, your orator begs leave to refer, and prays that the same may be taken and considered as a part of this his bill of complaint; a copy whereof shall be produced and filed in this honorable court, if required, under the corporate seal of the said company, to excavate,

embank, and construct, in a good, substantial, and workmanlike manner, a part of the canal which the said company were authorized to have made by their said charter.

And your orator further showeth unto your honor, that immediately thereafter he commenced his work under the said contract, and continued in the employment of the said company until the thirtieth day of September, eighteen hundred and thirty-five, when he was discharged by the said company, and not permitted to perform his said contract and agreement on his part, although he was always ready and willing so to do.

And your orator further showeth unto your honor, that on the eleventh day of March, in the year eighteen hundred and twenty-nine, he brought an action of covenant against the said company in the superior court of the State of Delaware, held at New Castle, in and for the county of New Castle; and on the twenty-fifth day of January, in the year eighteen hundred and thirty-four, obtained a judgment on inquisition returned by a jury in open court for the sum of two hundred and four thousand seven hundred and sixteen dollars thirty-six cents damages, sustained by your orator on occasion of the breach of covenant in the seventh count of his declaration mentioned, and for five hundred dollars costs; and also a judgment, upon verdict of a jury, in his favor, for the further sum of twenty-one thousand six hundred and sixty-nine dollars forty-eight cents, with six cents costs, besides the costs expended, as will appear by an office copy of his said judgment duly certified, and under seal, marked exhibit A, and to which he begs leave to refer, and prays that the same may be taken and considered as a part of this his bill of complaint.

And your orator further showeth, that the original contract herein before mentioned is filed in the superior court aforesaid; and that he hath not yet been able to obtain the same, or a copy thereof, or a full transcript of the record of his said judgment, but that he has ordered full copies thereof, and he prays that the said contract when obtained and filed, if it can be had, and the said copies when obtained and filed, may be taken and considered as a part of this his bill of complaint.

And your orator further showeth unto your honor, that on the twenty-seventh day of January, eighteen hundred and thirty-four, twenty one thousand eight hundred dollars, part of the said sum for which the said judgment was rendered, with interest from date, was assigned to the use of Samuel H. Hodson, esquire, cashier of the Bank of Smyrna, as trustee; and that on the twenty-seventh day of January, in the same year, the further sum of ten thousand dollars, with interest from date, was assigned to the use of the said Samuel H. Hodson, esquire, cashier and trustee as aforesaid; and that on the nineteenth day of September, in the same year, the sum of two thousand dollars, with interest due and to become due thereon, being one-fifth of the sum last mentioned, was endorsed

for the use of William Linn Brown, as will appear by the said transcript of the said judgment before mentioned and referred to; but your orator saith, that no part whatever of the said judgment hath been paid and satisfied.

And your orator further showeth unto your honor, that on or about the seventeenth day of November, in the year eighteen hundred and thirty-two, the Chesapeake and Delaware Canal Company aforesaid, made three deeds of mortgage to Joseph Parker Norris, Nicholas Biddle, Horace Binney, John Read, and Joseph Hemphill, of the city of Philadelphia, in the State of Pennsylvania, of all the lands, tenements, hereditaments, and real estate, and also the tolls thereafter to be received by them, save only such part or portions of the tolls as might be necessary to defray the expenses of the said corporation, and to keep their works in repair; and all rights, easements, immunities, and appurtenances to the said premises, or any part thereof belonging; and all other their estate, real, personal, or mixed, in trust, to secure the payment of the sum of one million of dollars, stated to be about to be borrowed by the said company; and that on the first day of January, in the year eighteen hundred and thirty-three, the said company made a fourth deed of mortgage, as above, to secure the payment of the sum of four hundred thousand dollars, except that Horace Binney is omitted as a party thereto, but that your orator hath no knowledge whether any, and what sums of money were borrowed under the said deeds of mortgage, or either of them; nor does he admit that any such loans were in fact made, or that such loans, if made, are valid, or that the said mortgages, or either of them, have any binding effect; all of which said deeds of mortgage were recorded among the land records of Cecil county court in this State; and your orator herewith exhibits and files an office copy under seal of one of the said deeds of mortgage, bearing date the seventeenth day of November, eighteen hundred and thirty-two, marked exhibit B, and prays that the same may be taken and considered as a part of this his bill of complaint; and your orator will procure and file copies of the said other deeds of mortgage, and prays that when so filed, they may be considered part of this bill.

And your orator further showeth unto your honor, that he hath been advised that the said deeds of mortgage were made by the Chesapeake and Delaware Canal Company aforesaid, without authority, in violation of and contrary to their charter, and in prejudice and fraud of your orator.

And your orator further showeth unto your honor, that he hath been advised, and so charges, that the said company have no property in Maryland or Delaware upon which a fieri facias could be levied, and the property sold, except the lots of land upon which their toll houses are erected, and which are of little or no value except for the use for which they were intended and are used.

And your orator further states, that he hath attempted to affect

the tolls of the said company by process of attachment, but that he hath not been able to obtain any benefit therefrom; and that the process of attachment is tedious, uncertain, and expensive; and that the whole amount, or nearly the whole amount, which could, if any could, be collected in that way, would be absorbed in the costs thereof.

And your orator further showeth unto your honor, that since the rendition of this said judgment in his favor against the said canal company, the said canal company, with the intention of defeating and defrauding your orator of his legal and equitable remedies against them in the State of Delaware, have removed their office for the payment of tolls at the east end of their canal, which is now finished, and in full operation, from the State of Delaware to Philadelphia, in the State of Pennsylvania, and that all vessels passing westwardly through the said canal pay toll there, and before they get into the State of Delaware; and that all vessels passing eastwardly pay toll at the west end of said canal, in Cecil county, in this State; and that, by this machination, your orator hath been entirely defeated in all his attempts to obtain any part of the sum of money so due to him as aforesaid on his said judgment.

And your orator further showeth unto your honor, that since the rendition of his said judgment, he hath frequently, and in a friendly way, applied to the said canal company, and to the president and directors thereof, for the payment of his said judgment, or some part thereof; and your orator had well hoped, believing that the tolls of the said canal company were sufficient for that purpose, that the said company would have complied with such reasonable requests of your orator. But now, so it is, may it please your honor, that the said canal company, knowing that they have no property in the State of Delaware upon which the amount so due to your orator can be levied and their property sold, and relying upon their said machination and contrivance of collecting all their tolls out of the State of Delaware, sometimes pretend that they are not indebted at all to your orator, and sometimes pretend that the tolls which have been collected since the making of the said deeds of mortgage, as well as those which may hereafter accrue, are not under their authority and control, and that the said company is insolvent and unable to pay its debts.

All which actings and doings are contrary to equity and good conscience, and tend to your orator's manifest wrong and injury. In tender consideration whereof, and for as much as your orator is, as he hath been advised, entirely remediless in the premises, except in a court of equity, where matters of this nature are properly cognizable and receivable. To the end therefore, that the Chesapeake and Delaware Canal Company aforesaid, under their corporate seal, and that Robert M. Lewis, president, and Isaac C. Jones and Henry D. Gilpin, directors of the said company, who reside in the city of Philadelphia; John Wilson, lock-keeper of the said canal, at the

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east end thereof, in the State of Delaware; Levi Boulden, lock-keeper and toll gatherer, at the west end of said canal, in Cecil county, Maryland; and the said mortgagees, Joseph Parker Norris, Nicholas Biddle, Horace Binney, John Read, and Joseph Hemphill, all of whom reside in Philadelphia, in the State of Pennsylvania; and the said Samuel H. Hodson, of the State of Delaware; and William Linn Brown, of the State of Pennsylvania; may each, upon his several corporal oath, full, true, and perfect answer make, to all and singular the premises, as fully and particularly as if the same were here again repeated and interrogated; and, especially, whether your orator did not obtain such judgment, against the said canal company, as hath been hereinbefore stated; and whether the complainant's exhibit A, is not a true copy of the same; and whether the said judgment doth not remain wholly unsatisfied; and whether the said canal company did not make the said mortgage hereinbefore mentioned; and what was the true consideration for them, and each of them; and how much, if any thing, is due upon the same; and what is the annual amount of tolls collected upon the said canal, and of the expenses of collection, and of keeping the canal in repair; and what amount of tolls has been collected since the twenty-fifth day of January, eighteen hundred and thirty-four, and where they have been collected, whether at the canal or elsewhere, and how they have been applied; and that the said canal company and Robert M. Lewis, may render an account thereof; and whether the said canal company have any, and what property, in the State of Delaware, and the value thereof, upon which an execution could be levied; and that the said deeds of mortgage may be brought into court and cancelled, and declared null and void; and that a receiver may be appointed to collect all tolls which the said company are entitled to demand and receive, from the master or owners of all vessels which may pass eastwardly through the said canal, to be stationed at the western termination of the said canal in Cecil county, in the State of Maryland; and that the said tolls, when collected, may be brought into this court, and applied under the direction of the court; and that the said tolls, when collected and brought into court, may be applied, after deducting the cost of collection, and such charges as your honor may think proper to allow, to the payment of your orator's said judgment; and that by a decree of this court, the said canal company may be compelled to pay to your orator the amount of his said judgment and costs, and costs in this court; and that your orator may have such other and further relief, as the nature of his case may require.

May it please your honor, to grant unto your *honor*, the State of Maryland's writ of subpœna, to be directed to the Chesapeake and Delaware Canal Company aforesaid, and to the said Robert M. Lewis, Isaac C. Jones, Henry D. Gilpin, Joseph Parker Norris, Nicholas Biddle, Horace Binney, John Read, and Joseph Hemphill, and William Linn Brown, all of the city of Philadelphia, in the

State of Pennsylvania; and to the said John Wilson, Samuel H. Hodson, of the State of Delaware; and, also, to the said Levi Boulden, of Cecil county, Maryland; commanding them, and each of them, to appear *appear* in this court, by a given day, and under a certain pain, therein to be inserted, then and there to answer, &c.

And, as in duty bound, your orator will ever pray, &c.

JOHN RANDEL, Jr.

JOHN SCOTT,
Solicitor for Complainant.

STATE OF MARYLAND,
Anne Arundel county, sct:

This sixth day of March, eighteen hundred and thirty-five, before the subscriber, a justice of the peace of the State of Maryland, in and for the county aforesaid, personally appeared John Randel, junior, complainant above named, and made oath, in the presence of the Omniscient and Heart-searching God, that the matters and facts set forth and stated in the aforegoing bill of complaint, are true as there stated.

Sworn to, before EDWARD DUBOIS.

In chancery, March 7, 1835.

Ordered that the application for the appointment of a receiver, as prayed by the aforegoing bill of complaint, stand for hearing, with or without the answers of all or any of the said defendants, on the last day of the present month: Provided that a copy of this order, together with a copy of the said bill of complaint, be served on each one of the said defendants thereto, on or before the thirteenth instant.

THEODORICK BLAND,
Chancellor.

MARYLAND, *sct:*

I hereby certify that the foregoing is a true copy of the original bill filed in the cause to which the same relates, now remaining of record in the office of the court of chancery of Maryland.

In testimony whereof, I hereunto subscribe my name, and affix the great seal of the State of Maryland, this twenty-
[L. S.] fourth day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

RAMSAY WATERS, *Reg. C. C.*

MARYLAND, *sct:*

I, Theodorick Bland, Chancellor of the State of Maryland, do hereby certify that Ramsay Waters, whose name is subscribed to the aforegoing certificate, is a register of the court of chancery of the said State, that the said certificate and attestation are in due form, and that full faith and credit ought to be given to the same.

Given under my hand, the great seal of the State having been first annexed to this paper, on this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

THEODORICK BLAND,
Chancellor.

MARYLAND, *sct:*

I, Ramsay Waters, register of the court of chancery of the State of Maryland, do hereby certify that the honorable Theodorick Bland, whose name is signed to the foregoing certificate, is Chancellor of the State of Maryland, and keeper of the great seal thereof.

In testimony whereof, I hereto subscribe my name, and affix [L. S.] the great seal of the said State, this twenty-fourth day of April, A. D. eighteen hundred and thirty-nine.

RAMSAY WATERS, *Reg. C. C.*

The separate answer of William Linn Brown, of the State of Pennsylvania, defendant, to the bill of complaint of John Randel, jr., of the State of Delaware, complainant, exhibited and filed against the Chesapeake and Delaware Canal Company, and the said William Linn Brown and others, in the high court of chancery of the State of Maryland.

The said defendant, for answer to the said bill of complaint, answereth and saith, that he admits the several matters and facts set forth and stated in the said bill of complaint, to be true as stated, and submits himself to such order and decree as the chancellor may think proper to pass in the said cause, praying that the chancellor will protect his interest, to the extent thereof, in the judgment therein mentioned.

And prays to be hence dismissed, &c.

WILLIAM LINN BROWN.
WM. C. SCOTT, *Solicitor.*

I, William Linn Brown, the defendant above named, do hereby authorize and empower William C. Scott, esquire, a solicitor of the said court of chancery, to appear for me as my solicitor in the cause above mentioned.

Witness my hand and seal this —— day of March, eighteen hundred and thirty-five.

WILLIAM LINN BROWN, [L. S.]

Witness: LEWIS C. ALEXANDER,
S. BADGER.

CITY AND COUNTY OF PHILADELPHIA,
State of Pennsylvania, sct:

On this 9th day of March, 1835, before the subscriber, a justice of the peace of the State of Pennsylvania, in and for the city aforesaid, personally appeared William Linn Brown, the defendant within named, and made oath, on the Holy Evangely of Almighty

God, that the within separate answer to the complaint of John Randel, jr., is his own true and proper answer.

WILLIAM LINN BROWN.

Sworn to and subscribed, before me, this 9th March, 1835,

S. BADGER, *Alderman*.

PHILADELPHIA COUNTY, *ss:*

I, Richard Palmer, prothonotary of the court of common pleas for the city and county of Philadelphia, do hereby certify that Samuel Badger, esquire, is an alderman of the city of Philadelphia and ex officio a justice of the peace, duly commissioned and qualified, and that full faith and credit is justly due to all his acts as such.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, the ninth day of March, A. D. [L. S.] 1835.

R. PALMER, *Prothonotary*.

PHILADELPHIA COUNTY, *ss:*

I, Edward King, president judge of the court of common pleas for the city and county of Philadelphia, do hereby certify that Richard Palmer, who hath subscribed his name and affixed the seal of his office, is prothonotary of the said court of common pleas, duly commissioned and qualified, and that full faith and credit is justly due to all his acts as such.

Witness my hand, the ninth day of March, A. D. 1835.

EDWARD KING.

MARYLAND, *sct:*

I hereby certify that the foregoing is a true copy of the original answer filed in the cause to which the same relates, now remaining of record in the office of the court of chancery of Maryland.

In testimony whereof, I hereunto subscribe my name and affix the great seal of the State of Maryland, this twenty-fourth [L. S.] day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

RAMSAY WATERS,
Register, Court of Chancery.

MARYLAND, *sct:*

I, Theodorick Bland, Chancellor of the State of Maryland, do hereby certify that Ramsay Waters, whose name is subscribed to the aforegoing certificate, is register of the court of chancery of the said State, that the said certificate and attestation are in due form, and that faith and credit ought to be given to the same.

Given under my hand, the great seal of the State having been first annexed to this paper, on this twenty-fourth day of [L. S.] April, in the year of our Lord, one thousand eight hundred and thirty-nine.

THEODORICK BLAND,
Chancellor.

MARYLAND, *sct:*

I, Ramsay Waters, register of the court of chancery of the State of Maryland, do hereby certify that the honorable Theodorick Bland, whose name is signed to the foregoing certificate, is chancellor of the State of Maryland and keeper of the great seal thereof.

In testimony whereof, I hereto subscribe my name and affix the [L. S.] great seal of the said State, this twenty-fourth day of April, eighteen hundred and thirty-nine.

RAMSAY WATERS,
Register, Court of Chancery.

Section 6th. If the garnishee or garnishees, summoned as aforesaid, shall fail, or neglect to appear, and declare upon oath or affirmation, what goods, chattels, or effects, rights, or credits of the defendant, he, she, or they had in his, her, or their hands, custody, or possession, at the time of the attachment laid, or at any time after an attachment or attachments of contempt shall issue out of the said court against such garnishee or garnishees to compel him, her, or them to appear; and if the garnishee or garnishees do appear, and at the request of the plaintiff, or any other creditor, shall declare on his, her, or their oath or affirmation, that he, she, or they had no money, goods, chattels, rights, credits, or effects of the defendant in his, her, or their hands, custody, or possession, at the time of the attachment laid, or at any time after; then such garnishee or garnishees shall be discharged; but if the plaintiff in the attachment, or any other creditor or creditors of the defendant, shall require the garnishee or garnishees to plead that he, she, or they had no money, goods, chattels, rights, credits, or effects of the defendant in his, her, or their hands, custody, or possession, at the time of laying the attachment, or at any time after, then such garnishee or garnishees shall not be admitted to make oath or affirmation as aforesaid, but shall be obliged to plead such plea; and the plaintiff, or any other creditor or creditors as aforesaid, may take issue thereon, and proceed to trial; and if it shall appear to the jury on the trial of such issue, that the garnishee or garnishees had any money, goods, chattels, and effects, of the defendant, in his, her, or their hands, custody, or possession, they shall find a verdict for the plaintiff, or such other creditor or creditors, and assess damages to the value of such money, goods, chattels, and effects, with costs of suit; whereupon judgment shall be entered against the garnishee or garnishees, and the plaintiff, or such other creditor or creditors shall, at his, her, or their election, have an execution against such garnishee or garnishees, his, her, or their bodies, goods, and chattels, lands and tenements, as for his, her, or their proper debt or debts; and the money levied thereon, shall be distributed among all the creditors of the defendant, in manner and form as is herein after directed.

Section 7. *And whereas* it frequently happens, that the persons or garnishees in whose hands the defendant's goods, chattels, or

effects are attached, reside in another county or government, or are likely to depart this government, or remove out of the county where the attachment is served, and the plaintiff loses the benefit of his writ; for remedying which inconveniency, if any plaintiff in any writ of attachment prosecuted within this government as aforesaid, or any creditor claiming any benefit by or under such writ of attachment, shall, upon oath or affirmation, declare that the garnishee is not an inhabitant of this government, or of the county where the attachment is depending; or in case the garnishee is an inhabitant, that he or she verily believes such garnishee is about to depart this government, or the county where such attachment is depending; and that he or she does also believe, that said garnishee hath some of the defendant's goods, chattels, or effects in his or her hands, or possession, or is indebted to the defendant in any sum of money, although the same shall happen at that time not to be due; then, and in such case, it shall and may be lawful for the plaintiff or creditor to take a writ against the said garnishee or garnishees, and oblige him, her, or them, to find sureties to appear at court, and make answer as by this act is required, and further to abide the judgment of the court.

DOVER, DEL., *Aug.* 27, 1832.

MY DEAR SIR: I rejoice to hear that you are getting well, and as one among your many friends, I feel sincerely thankful to God, that he has been pleased to spare you when so many thousands who have been attacked by the horrible pestilence have sunk under it. When any man whom I have known and esteemed is attacked by cholera, and escapes, I think of him as of some friend who has been shipwrecked in a dreadful storm, and escaped with life from the billows. When I see you I shall expect to hear an account of the perils you have encountered.

When you are able, come down to Dover, and bring Randel's papers with you. If not able to come by the 3d of September, send me the papers with such information on the points referred to in my letter to Mr. R. as you may think useful. I have a copy of the narr. and pleas. Your aid will be invaluable to me. Fail not to come if you can. There will be no trial till the court in course of November. The replications must be filed by the 10th September.

Very truly, yours,

JNO. M. CLAYTON.

WILLIAM LINN BROWN, Esq.,
Philadelphia.

Directed to
WILLIAM LINN BROWN, Esq.,
Philadelphia, No. 112, *Filbert street.*

DOVER, DEL., *Sept.* 6, 1836.

DEAR SIR: Please inform me whether John Randel, jr., has paid you or not. I have received no certificate—nor can I learn that any

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other counsel has. He has observed towards me a most profound silence for a month past. How different it is from the period when my services were necessary to him. Scott writes and complains bitterly. Where is Randel? Did the canal company and loan holders accept the late Delaware and Maryland acts, or not? I am entirely ignorant.

Do write by next mail. Yours, truly,

JNO. M. CLAYTON.

W. L. BROWN, Esq, *Philadelphia.*

Directed to

WILLIAM LINN BROWN, Esq.,
Attorney at law,
No. 47, *South 8th st., Philadelphia.*

WASHINGTON, *May* 20, 1836.

DEAR BROWN: Please inquire of Mr. Littell whether he has sent to Dover all my "law library." I shall be at home in three days, and shall want it at once.

I have not heard from Randel for several days. The Governor of Delaware will, I hear, call the Legislature. He so wrote to me. I shall go home to insure that. Please attend the stockholder's meeting in Philadelphia on the 23d, and immediately write me how many are present, and what they are. I hope they will agree unanimously too; if so, ask Mr. Lewis to send to me, *at Dover, Delaware,* a duplicate of the contract, endorsed, as it directs, and a copy of the proposed law.

Ever truly, and with great affection, your friend,

JNO. M. CLAYTON.

P. S.—Inquire what steps are taken to get the law passed by *Pennsylvania and Maryland.*

Directed to

WILLIAM LINN BROWN, Esq.,
No. 47, S. 8th street, Philadelphia.

(Confidential.)

WASHINGTON, *April* 11, 1836.

MY DEAR SIR: I shall be in Philadelphia at the Tremont house, on Wednesday, the 13th instant, after the arrival of the boat from Baltimore. On the receipt of this, oblige me by calling on the keeper of the Tremont house, in Chesnut street, and getting me a good large room for two or three days. He is a Delaware man, and a very clever fellow.

If I have luck, you will, in consequence of this visit, be able to get your money from Randel in a few weeks.

Ever, most sincerely, yours,

JNO. M. CLAYTON.

WILLIAM LINN BROWN, Esq., *Philadelphia.*

DOVER, DEL., *September* 28, 1835.

MY DEAR BROWN: I have returned from Baltimore after a considerable absence, and left the affairs of our friend Randel in a good condition, and rapidly progressing to a decision. I cannot doubt that the result will be favorable.

You have had books bound for me, and incurred other expenses of which you have not presented the account. Please send it on and let me pay it speedily. I owe you many obligations for your kindness in attending to my requests. Do not delay to send me the bill of expenses.

Include in these, the framing of the *portrait*, which, when done, please send down by one of the shallops, trading from Pine street wharf, to Little Creek landing. Write me.

Ever your friend, sincerely,
JNO. M. CLAYTON.

WILLIAM LINN BROWN, Esq.,
Philadelphia.

Directed to
WILLIAM LINN BROWN, Esq.,
No. 47, *South* 8*th street*, *Philadelphia.*

DOVER, DEL., *August* 23, 1835.

DEAR BROWN: The 22d vol. of Eng. C. L. R., which you sent me, I had before. This volume professes to publish the book I sent for, viz: the 2 Barn. and Adolphus; but it omits many of the most important cases, and among the rest, the *very* case I wanted to see in Barn. and Adolphus, of which it contains only a miserable marginal note. It was for this very reason that I wrote for the second Barn. and A. I have returned the 22 Eng. C. L. Rep., by Mr. Randel, it not being the book I wrote for. Get them to take it back as it was bought by mistake.

You need not give yourself any trouble about the 2 Barn. and A. It could not be bought I knew, but I thought might be borrowed for a few days of some Philadelphia lawyer.

I have inquired for notes of the cases you refer to, but have not found them; you shall have them if possible to get them.

Ever, most affectionately and truly, your friend,
JNO. M. CLAYTON.

P. S.—I have, with nearly all my family, been very sick this ten days.

Directed to
WILLIAM LINN BROWN, Esq.,
Philadelphia.

DOVER, *June* 27, 1835.

DEAR SIR: Please deliver the enclosed check for me to Messrs. Browning & Everett, and request them to send down the clothes,

so that I may have them *in a few days;* accept my thanks for your kindness.

As to the canal mortgages, they *are void*, I can show that; in Delaware, they are afraid to state a case about them.

If they will submit the question of their validity to the court here next fall, you may bet for me five thousand dollars, *on the result* being in favor of Randel, provided my name do not appear in the bet. Money to be staked. I write this in confidence.

If you will get such a bet for me, I will give you five hundred dollars for it.

Ever truly, yours,
JNO. M. CLAYTON.

Directed to
WILLIAM LINN BROWN, Esq.,
No. 112, *Filbert street, Philadelphia.*

DOVER, DEL., *May* 3, 1833.

DEAR SIR: I wish you to meet me at New Castle on Tuesday evening, or Wednesday morning next, on Randel's business. Write to him that we shall want all his papers, and wish to see him there, or as soon after as may be. The cause is on the trial list, but will not be tried.

Very respectfully, yours,
JNO. M. CLAYTON.

P. S.—I have drawn up the replications, &c.

Directed to
WILLIAM LINN BROWN, Esq.,
Philadelphia.

ELKTON, *Wednesday night, Dec.* 7, 1831.

DEAR SIR: I have been informed by my counsel, that the new constitution of the State of Delaware goes into operation the beginning or middle of January, and that probably no court will be held till after that time. You need not, therefore, come down till I give you further notice, which I will do after I have seen Mr. Clayton on Saturday. Please inform Mr. Gould and Mr. Boehm of the above cause of delay, and that you will inform them when to come down.

Yours, truly,
J. RANDEL, Jr.

Mr. WM. LINN BROWN.

Directed to
Mr. WM. LINN BROWN,
No. 112, *Filbert street, Philadelphia.*

NEW CASTLE, *Saturday, Nov.* 8, 1834.

DEAR SIR: You will oblige me very much by coming to this place in Monday morning's steamboat, Captain Sutton will come up to

meet us here at that time. You may be detained perhaps 2 days. Do come if you can, and oblige, yours truly,

JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

P. S.—Please send an answer by the bearer.

Directed to

WILLIAM LINN BROWN, Esq.,
No. 112, *Filbert street, Philadelphia.*

NEW CASTLE, *Tuesday, July* 29, 1834.

DEAR SIR: I have concluded not to go to Dover to-morrow, and cannot now fix the day. If you have any memorandum for Mr. Clayton, please send it to me by the morning mail to this place.

Yours, truly,

J. RANDEL, Jr.

WASHINGTON, *Monday, Jan'y* 12, 1835.

DEAR SIR: I came here to get Mr. Clayton to draft me a law to compel the canal company to pay me at once—he is now drafting a law to be presented to the Delaware Legislature.

I mentioned to Mrs. Randel that you spoke of employing B. Newcombe; she thinks he is intemperate; I don't know him. If you have not already employed him, you had better employ some other person more eminent at the bar, as considerable business may grow out of these proceedings. Suppose you inquire of Mr. Kittera. The difficulty is, to find an eminent lawyer that is not already employed by the bank, the canal company, or the loanholders. I expect to be at New Castle in two or three days, where I shall be pleased to hear from you.

Yours, affectionately,

J. RANDEL, Jr.

W. L. BROWN, Esq.

Directed to Wm. Linn Brown, Esq., No. 112 Filbert street, Philadelphia.

NEW CASTLE, SATURDAY, *January* 24, 1834.

DEAR SIR: Mr. Rogers has just returned from Dover, and goes down again in Tuesday's stage. The bill has had its first reading in the lower house; the canal company had agents there, and sent expresses up to Philadelphia. Of course I expect to meet with warm opposition.

I have concluded that it will be unsafe to sue in Philadelphia till this bill is disposed of. Of course I wish you, upon the receipt of this, to *stop all proceedings* in this suit till I see you, if Mr. Ingraham has even issued the summons. If the sheriff has not yet served it, you can stop it in his hands by calling upon him *immediately*, which I wish you by all means to do. Please write me at

Dover (where I expect to be by Monday morning) that you have received this, and inform me what you have done in this business.

Yours, truly,

JOHN RANDEL, Jr.

WM. LINN BROWN, Esq.

In the district court for the city and county of Philadelphia.

On the ninth day of June, A. D. 1829, William Linn Brown, a resident of Philadelphia, aged twenty-three years, was registered in this office as a student at law.

And on April 27, A. D. 1835, on motion or John Sergeant, Esq., and filing the favorable report of the examiners, the said William Linn Brown was sworn and admitted to practice as an attorney of this court.

Certified from the record, April 26, A. D. 1839.

[L. S.] Pro WILLIAM V. PETTIT, *Proth'y*,
WM. H. COLEMAN, *Clerk*.

December 27, 1831.—Mr. Randel agrees to pay Mr. Clayton one thousand dollars in cash for his services as counsel in the case of the Chesapeake and Delaware Canal suit, wherein said Randel is plaintiff. Said Clayton is to prepare the pleadings as well as he can, and to try the cause through all the courts to which it may go. And further, said Randel agrees, for further compensation to said Clayton, (in behalf of himself and his assigns, as whose attorney, in fact, he now acts,) that the said Clayton shall have ten per centum on the amount recovered, which shall be marked for his use by the prothonotary or any attorney of the court, transferring it on the docket, by virtue of this warrant, to said Clayton, or any person he may name, whenever he may please to have it done.

Signed and sealed.

JOHN M. CLAYTON, [L. S.]
JOHN RANDEL, Jr., [L. S.]

$500 paid, and Stockton's check for $500.

New Castle, January 27, 1834.—I have this day assigned, on the record of my judgment against the Chesapeake and Delaware Canal *Canal* Company, to Samuel H. Hodson, cashier of the Bank of Smyrna, as trustee, the sum of twenty-one thousand eight hundred dollars; and I hereby declare the use of the trust, viz: that said Hodson shall hold the same in trust for John M. Clayton, my attorney, in full of his ten per cent., as above agreed for.

Witness my hand.

JOHN RANDEL, Jr.

(Endorsed.)

June 27, 1835.—The within named Samuel H. Hodson agrees to accept the said trust for said Clayton, and hereby authorizes any attorney for said Clayton to transfer the sum standing on the record

of the judgment of John Randel, Jr., *vs.* the Chesapeake and Delaware Canal Company, (transferred to Samuel H. Hodson, cashier, by said Randel, in January, 1834,) to said Clayton, or any one he may name.

To this all parties agree; the sum so transferred is $21,800, with interest from January, 1834.

JOHN RANDEL, Jr.,
S. H. HODSON.

It is also agreed, that any attorney said Clayton may appoint may transfer the said sum of $21,800, with interest from January, 1834, on the record of any decree said Randel may obtain in Maryland or elsewhere, to said Clayton, or any person he may direct.

S. H. HODSON,
JOHN RANDEL, Jr.

June 27, 1835.

Received, June 18, 1836, of Mr. John Randel, Jr., an order on the Chesapeake and Delaware Canal Company for a certificate of debt, secured to him by judgment and also by the late acts of the Legislatures of Maryland and Delaware, which order is for such certificate to be issued in favor of Thomas Stockton, or any person he may direct, or order, for the sum of twenty-eight thousand dollars, with lawful interest from the first day of July next. This certificate is to be in full of all sums due to said John M. Clayton, by or from said John Randel, for or on account of his services as counsel in said Randel's law suits with the Chesapeake and Delaware Canal Company. All former contracts between said Randel and his said counsel were cancelled, rescinded, and given up to said Randel on the 16th June, 1836, when said Randel's said law suits were terminated and ended. This certificate, when issued, to be a full settlement forever. At Mr. Randel's request, I add the following: As a gratuity to said Randel, and without any consideration, I will, if health permits, and as soon as I conveniently can, revise for publication the volume he proposes to publish, giving a history of his said law suits and the various questions of law which have been agitated and decided in the progress of them.

JNO M. CLAYTON.

$28,000.

Transcript from the docket of Alderman Binns.

JOHN WATSON & Co.
vs.
T. BOOTH ROBERTS, Esq.
} Costs $1 56—trans. 25.

Warrant issued, December 10, 1836.
Returned, December 12th.
Served on the defendant by D. Lippard, constable.
Parties appear.

Plaintiff's claim is for clothing sold and delivered, $95 50, interest, $4 29; demand, $99 79. Judgment for the plaintiff for ninety-nine dollars and seventy-nine cents.

20 D. ex. iss.; ret. Dec. 31: defendant in custody; eo. D. I become special bail in $220 00.

HENRY HUGG.

Discharge given to special bail same day.
Bail piece issued, Aug. 7; int. $3 96.
Money paid into office; rec'd satisfaction.

THEODORE EVANS, *Agent*.

CITY OF PHILADELPHIA, *ss:*

(Tr. for Resp., May 1, 1839.)

I certify that the above is a correct transcript of the proceedings had before me in the above suit, and of record on my docket.

Witness my hand and seal at Philadelphia, this first day of May, anno domini 1839.

JOHN BINNS, *Alderman*, [L. S.]

Interrogatories and answers.

1. Did or did you not tell defendant that you had read complainant's bill? Did or did not defendant present you his answer to read; and if yea, did you read, or refuse to read it?

He did, and I refused to read it.

2. When you speak in your 9th answer, in commission issued by complainant, of defendant not considering complainant indebted to him, do you mean to say that defendant ever said to you [No. 2.] that complainant was not indebted to him? Did he say he had no legal claim against complainant? Did he say, that what he expected from complainant was as a gift or gratuity?

I do not recollect that defendant ever said, in *so many words*, that Randel was not indebted, or that he had no legal claim, or that what he expected was as a gift or gratuity; but the impression created on my mind by our various conversations on the subject, was such as to make me believe that these were his views—as further explained at large in my answers to complainant's commission, referred to in this interrogatory.

3. Was or was not what defendant said to you, in relation to his claim against complainant, said in the course of a friendly conversation, to effect an amicable settlement, or compromise, and expressly to avoid a quarrel or dispute with complainant?

What defendant said to me in relation to his claim was said in the course of a friendly conversation in reference to my voluntary offer to get from Randel, as promptly as his convenience would allow, whatever sum he intended for defendant.

4. Have you, or have you not, said since your testimony was taken down under a commission issued by complainant, that your [No. 1.] deposition contained *nothing positive* in regard to the subjects mentioned in the second interrogatories?

Yes, I have remarked, in conversation, that my testimony contained nothing positive as to my knowledge of the facts in this case, but of my impressions, gathered from conversations with defendant, as stated in my answers to interrogatories in complainant's commission.

5. Did defendant ever say to you, that he had been paid by complainant for his services to complainant, considered in any light whatever as common clerk, general agent, or assistant counsel?

No.

6. Before you consented to act as mediator, did or did not the defendant say, and repeat, in the most earnest language, to you, that a verbal promise existed between him and complainant as to contingent compensation in the event of success?

Before I volunteered to act as a friend (not a mediator, for I knew of no disagreement between the parties at that time,) the [No. 2.] defendant said to me, that he had a promise from complainant to make him a "*contingent compensation*," in the event of success.

7. What reason did defendant give you for his wishing to avoid a dispute with complainant?

Defendant said he wished to avoid a dispute with complainant [No. 3.] because he considered him a litigous man, and vindictive when he had controversy with others.

8. Was or was not a considerable part of the conversations had between you and defendant, at the time mentioned in your deposition, taken under a commission issued by complainant, upon the subject of complainant's paying his debts? if yea, state fully, and at large, what was said by defendant on the subject.

A part of the conversation was on this subject; respondent complained that complainant had not paid some debts in which he was jointly responsible with him, and said he had heard that [No. 2.] complainant had received large sums of money on his certificates, but had expended the same in purchase of property, and not in paying his debts; and he urged me to press Randel to pay up his debts, especially his small debts, promptly, for his credit's sake.

I have no copy of the remaining interrogatories, 9, 10, 11, and 12. The answers have been furnished W. L. B.

ALBANY, *February* 24, 1838.

DEAR SIR: I send you, as soon as I could find time to copy these, the above. I am exceedingly obliged for the *documents* transmitted, of which I can make important use. Any document in reference to the coal regions, which will supply the State of New York through our railroads, will be of great further service, in pressing our Legislature to carry out a great scheme of aid to railroad and canal com-

panies—all of whom will, indirectly or directly, become the carriers of your staples.

Yours, truly, R. V. D. W.

W. L. Brown, Esq.

Directed to
William Linn Brown, Esq.
Counsellor at law,
208, *Pine street, Philadelphia.*

Corrected replies to W. L. B.'s interrogatories.

1. As in your memorandum.

2. After *said*, insert "in so many words," and annex "as explained at large" in my answers to interrogatories to complainant's commission, referred to in this interrogatory.

3. Yes, what defendant said to me in relation to his claim was said in the course of a friendly conversation in reference to my voluntary offer to get from Randel, as promptly as his convenience would allow, whatever sum he intended for plaintiff.

4. Yes, I have remarked, in conversation, that my testimony contained nothing positive as to my knowledge of the facts in this case, but of my impressions, gathered from conversations with respondent, as stated in my answers to interrogatories to complainant's commission.

5. No.

6. Before I volunteered to act as a friend (not a mediator, for I knew of no disagreement between the parties existing at that time,) the defendant said to me that he had a promise from defendant to make him a *contingent compensation* in the event of success.

7. Respondent said he wished to avoid a dispute with complainant, because he considered him a litigous man, and vindictive when he had controversies with others.

8. A part of the conversation was on this subject. Respondent complained that complainant had not paid some debts in which he was jointly responsible with him, and said he had heard that complainant had received large sums of money on his certificates, but had expended the same in purchases of property, and not in paying his debts, and he urged me to press Randel to pay up his debts, especially his small debts, promptly, for his own credit's sake.

9. Yes, the defendant did tell me that complainant was indebted to him for said note. My recollections in regard to the remaining matters asked in this interrogatory are too indistinct to be relied on.

10. The complainant was indebted to me more than $5,000.

11. As I never asked defendant for *cash*, he never had occasion, and never did, give any reason.

12. No; on the contrary, he told me, that he had raised some amounts on those certificates, but at a high premium.

Last. No.

ALBANY, *January* 20, 1838.

DEAR SIR: Mr. Randel has been here with the copy of interrogatories filed, and, as you had *once before*, asked me what I meant to answer to them. On going over them I have made them more enlarged than the memorandums furnished you, and send you a copy of what will be my reply on execution of commission, although in truth I cannot conceive what sort of legal proceedings you have which permit any party to bring in his own conversations as evidence.

In our courts not a word of these interrogatories would be permitted to be read.

I hope your wife and child are well, as we are all here.

Yours, truly, R. V. D. W.

W. L. BROWN, Esq.

Can you send me a paper containing your State *railroad reports*, particularly *McMenafie's*, or his who has charge of the Columbia road.

Directed to

WM. L. BROWN, Esq.
208 *Pine st., Philadelphia.*

In the Circuit Court of the United States for the Eastern district of Pennsylvania, in the third circuit.

RANDEL vs. BROWN. } In equity—1839, May 6th.

Ordered, that this case be referred to John M. Scott, Thomas I. Wharton, and Peter McCall, esquires, who are hereby appointed and authorized to act as masters therein, with power to administer oaths to the parties and witnesses who may be produced; to examine the witnesses *viva voce*, or to take their depositions, as they may deem proper; also, to direct rules to be entered by the clerk of this court, for taking the depositions of witnesses, on such notice, at such times and places, and before such officers, as they may direct; and like rules for commissions to issue for the examination of witnesses on interrogatories, on such terms as may by them be prescribed—which rules shall have the same effect as if made by this court on special motion.

Depositions heretofore legally taken under rule or commission, and the examinations of witnesses, reduced to writing by the examiner heretofore appointed, may be admitted in evidence without any further rule or examination; or, at the discretion of the said masters, the witnesses may be re-examined in such manner, and at such time and place, as may be directed; and the said masters shall also have power to limit the time within which the evidence in the cause shall be taken, and the exhibits of the parties presented to them, and to meet and adjourn from time to time at their discretion.

It is further ordered, that all the evidence taken in the cause be reported to the court, together with a statement by the said masters, or a majority of them, of such facts as in their opinion are established by the evidence, together with their opinion touching any matters on questions which they may deem material for consideration; and especially, 1st, to report the terms, consideration, and conditions of the transfer of the two certificates of debt referred to in the bill and answer, in the consideration of which, the answer of the defendant, so far as it is responsive to the averments of the bill or interrogatories, or a denial of the former, is to be taken as evidence in the cause, according to the rules of equity. 2d, to report what sums of money have been paid by the plaintiff to defendant, for or on account of disbursements made by defendant—time, labor expended, services rendered, for or to the plaintiff, for his use or at his request; whether any sum is yet due to defendant therefor, and to what amount.

JOHN RANDEL, Jun'r,
vs.
WILLIAM LINN BROWN.

To the honorable the Judges of the Circuit Court of the United States for the Eastern district of Pennsylvania—In equity.

The undersigned, two of the masters to whom this cause was referred, by the annexed order of this honorable court, respectfully report:

That they entered upon the duties of their appointment on the fourteenth of May, 1839, and have continued in the investigation of the case at various meetings, between that day and the date of this report.

They have been attended by Mr. Joseph R. Ingersoll and Mr. Charles Ingersoll, on the part of the complainant, and by Mr. Cadwalader and Mr. Tyson, on the part of the respondent.

The arguments of counsel were closed on the nineteenth of February, 1840, and the cause committed to the deliberations of the masters.

The duty thus devolved upon the masters has been surrounded by difficulties resulting from the entire variance in the allegation of the parties, so utterly opposed that no ordinary hypothesis, founded upon supposed mistake or misconception, can account for that variance, and from the character of the evidence in the cause, of which much the greater part is verbal, and marked with the usual discrepancies and contradictions of such testimony.

The undersigned have endeavored to weigh this evidence, carefully and impartially, including that to be found in the pleadings, in documents exhibited, and in the depositions taken, and to give to each portion its just weight, according to the rules of equity, and to *the* answer the effect prescribed by the order of the court, and proceed to state the result.

The general statement and gist of the complainant's bill is, that he delivered to the respondent two certificates, each for five thousand dollars, of the debt of the Delaware and Chesapeake Canal Company, funded under certain acts of the Legislatures of Delaware, and Maryland, and Pennsylvania, which certificates were part of a larger amount of debt due to the complainant entitled under those acts to certain valuable priorities; that he delivered these certificates to the respondent upon the trust that he should use them for the purpose of borrowing money for the use of the complainant.

The bill states the circumstances of the delivery, and, referring to the former connection of the parties, avers the absence of all indebtedness, and it interrogates the defendant:

"Whether he did not receive the certificates and power of attorney in trust and confidence, *and under the circumstances aforesaid; and whether he had any interest in the same*, and was not, in holding the same, a mere trustee for your orator."

The breadth of these interrogatories is such as not merely to justify, but to require, the full detail of the "*circumstances*," and the full statement of the *interest* of respondent in the certificates given in the answer.

We must therefore take the answer, in its general scope and in its particular allegations, as prima facie true, and throwing the burden of disproof on complainant.

Yet it is presumed that the answer of a defendant cannot challenge greater credit than would be given to the narration of an impartial witness; and that, if it is clearly evasive or contradictory, or is disproved in the manner required in equity in important particulars, it must submit to the same degree of discredit which, under like circumstances, would be imputed to the story of a witness.

To the main and leading allegation and interrogatory of the bill, that the certificates were delivered in trust, the answer gives a flat denial, and asserts, in one place, that they were given to him *to pay himself and Mr. Camac*—that he promised so to appropriate them, viz: in the payment of $2,000 to Mr. Camac, and the balance as a payment to himself; in another place, that they were "his absolute and unqualified property;" and in a third place, in answer to the special interrogatory, that they were transferred to him "absolutely as an unqualified transfer in payment of a debt due to him by complainant, and distinctly admitted by him, and to enable him, the said respondent, to pay W. H. Camac the amount of his (respondent's) acceptance;" and that he has an absolute and unqualified interest in the certificates, to the whole amount of their principal and interest, and that he does not hold them as a trustee for the said complainant, nor any other person or persons, but in his own right and for his own use. In these statements there are perhaps some inconsistencies, but we regard them as those of phraseology, rather than of meaning. The property was not

entirely unqualified, or absolutely free from trust, as the answer asserts that Mr. Camac had an interest, at least, in the proceeds; but the respondent himself shows this clearly and fairly, and therefore no imputation can arise against the answer. He says, "Randel told me they were to pay myself and Mr. Camac."

To the main features of the bill is given this denial; and to the main interrogatory this response, in terms of great strength.

To another principal allegation of the bill that the complainant was not indebted to the respondent, the answer gives an equally plain contradiction, and a statement very clear and explicit of an actual indebtedness, of its manner and amount; the mode in which it arose being chiefly two fold, for time and for per centage, and the amount for each accurately designed. And in reply to the question as to the circumstances of the transfer, the answer contains a very minute circumstantial narrative, including the fact of indebtedness, as well as the particulars concomitant upon the actual delivery.

The leading questions therefore presented by bill and answer, are whether the certificates were deposited upon any, and what, trust with the respondent, or handed to him as his unqualified property. And whether at the time of that transaction the complainant was indebted to the respondent, and in what amount.

They are not, however, independent questions; as a clear opinion formed upon the latter, would influence greatly a decision of the former; and the inquiry into these questions, we conceive, will embrace, and enable us to answer the specific points on which we are directed to report.

We will examine these questions in their order; and first, as to the alleged trust. This is an affirmative to be proved by the party setting up the trust. The delivery of the certificates to the respondent, with a power of attorney authorizing a transfer to himself or any other person, import ownership, not trust, although they may well consist with a case of trust. The complainant has produced no direct and positive proof of trust, that is to say: no written acknowledgment or declaration of the trust; no receipt, nor any verbal acknowledgment of a trust made to himself or to any person representing him; no evidence by witnesses to, or present at, the transaction. But he has produced the testimony of four persons, who depose in very emphatic terms to the declarations of the respondent, made at a time when he was bending his attention to the collection of evidence in this case, in conversations relating to the case, and to an advertisement highly derogatory to the respondent; and when, therefore, it is natural to presume that his language would be well considered, and his case stated in the strongest point of view, it would properly bear in his own favor. The undersigned have been strongly impressed with the testimony of these persons: they are Mr. Roberts, Mr. Gray, Mr. Janvier, and Mr. Blayney. Those portions of their testimony are detailed which struck us most forcibly.

2d June, '37.—T. B. Roberts says, that when conversing with respondent about his controversy with Randel, and the advertisement made by Randel, the respondent told him, "that he did not wish to retain the certificates, further than that he wished Mr. Randel to pay certain debts for which these certificates were put in his hands for the purpose of negotiating a loan to pay."

Again, "He stated, that the certificates had been put into his hands by Mr. Randel to raise money upon them to pay certain debts of Randel in Philadelphia, one of which he mentioned was to Mr. Camac, which debt, I think, he stated himself under some obligations to have paid by Mr. Randel, but I do not recollect the particulars, and another debt to Mr. Charles Ingersoll; he did not state that the balance was for himself. He said, that he had exerted himself to negotiate the certificates to several persons, one of whom, I think, he said, was a Mr. Biddle, but that he could not succeed. That Mr. Randel was going to the south without the settlement of those claims; and that, in an interview with Mr. Randel, when he, Mr. Randel, talked of going to the south, that Mr. Randel wished him to return the certificates to him, but that he refused to do so, until he, Mr. Randel, had settled those debts which he owed; and that Mr. Randel became very angry, and used vehement language."

Again, "He did not say that the certificates were given to him in compensation for his services, *but to negotiate a loan* to enable Randel to pay his debts."

"He wanted to ascertain from me what his compensation should be, and said he would keep the certificates. He had *held on to them* because Randel had not paid him and other persons; but he *did not state that they were given to him for the purpose of paying himself.*"

"He said that the certificates had been put into his hands to raise money to enable Randel to pay certain debts, but not naming his own."

The cross examination does not change these statements. There is, however, one fact in it to be noted, which detracts somewhat from the weight of the testimony, viz: that he had read the bill and answer at the request of Mr. Randel, at different times, and on the day when his deposition was taken. It is proper, also, to say, that there was evidence of an alleged dispute between the witness and respondent, which it was asserted might have influenced the testimony of the witness. But, in the estimation of the undersigned, his credit was fully sustained.

Assuming this witness to be worthy of belief, and we cannot do otherwise, his testimony is very pointed. The conversation was particular, minute, not casual, but with the avowed object of using him as a witness upon a subject not new to him; but, on the contrary, having interest in his estimation both from the persons and matters to which it related, his curiosity and attention were both likely to be sharpened, and his memory to be rendered tenacious.

The conversation was but six months before his testimony, and his account of it is positive and unwavering.

Then what does it amount to?

It shows clearly that Mr. Brown did not conceive himself to have an "unqualified property" in the certificates.

That he did not claim them as property, but as a means of enforcing certain acts of duty upon the part of Randel.

That he had determined "to hold on to them," an expression not consistent with the feeling of personal ownership.

That they had been put into his hands to negotiate with, for payment of debts, and that he did not claim any ascertained or specific part of them, or their proceeds, as his own.

Had he been in his own estimation the clear indisputable owner of those certificates, with no other obligation than that of paying Mr. Camac, it is incredible that he should have so expressed himself to, and have thus conversed with, Mr. Roberts.

The same remark is elicited by a consideration of the testimony of Mr. A. C. Gray, whose testimony we will next examine.

To Mr. Gray, respondent went to procure his services as a *commissioner*. Mr. Gray consented so to act, and it is therefore, perhaps, fair to consider, that respondent in what passed was endeavoring to instruct his commissioner in the points at issue. Mr. Gray says:

He stated that he had received a transfer, I think of $10,000, from Mr. Randel, of the canal debt, *for* the purpose of raising money, with which Mr. Randel wished to pay his *debts*. He told me at the time, that he had found considerable fault with Mr. Randel in not settling up some of his debts, after he had had an adjustment of his difficulties with the canal company. And in consequence of Mr. Randel's apparent indisposition to pay his debts, (I think he mentioned one to Mr. Ingersoll, perhaps one to Mr. Camac, as another; although, I am not certain now.) He stated, also, that Mr. Randel had owed him money for services which he had rendered him, during the long litigation which had taken place between Randel and the canal company. In consequence of these things, he had determined to hold on to these certificates.

That Randel was going south, &c. "He *determined to hold on to these certificates as the only means of enforcing the settlement of them*," (*these claims*.)

"That he had Mr. Randel in his power. Seeing his indisposition to pay, he *had determined to make use of the power he had to pay himself*."

"Did not give me to understand certificate had been put into his hands for the purpose of paying him his debt, or as a satisfaction for it."

My apprehension "that the certificates were placed in his hands for the purpose of raising money generally, and that after he had received the certificates, in consequence of all the matters I have

mentioned, he had a perfect right, and *it was the best opportunity of securing payment to himself of his debt.*"

Witness had seen Mr. Randel's advertisement.

Cross examined.

"Don't recollect Mr. Brown's words as to the certificates. Thinks he did not say they were put into his hands to pay himself and Mr. Camac. Thinks he said, as he had them in his possession, it was as well to *hold on to them* for the purpose of paying himself. And thinks he mentioned Mr. Camac and Mr. C. Ingersoll, as well as he can recollect. Told *him he was justifiable in holding on to them*, if he had a claim against Randel, and wanted to get the money.

Understood it was his *intention* to pay Camac, *not his agreement* with Randel."

Impression made, was that Mr. Randel had put these certificates in his hands for the purpose of raising money. That after getting them, being fearful Randel would not pay him, he was determined to take care of himself.

"There was something about the re-assignment of the judgment, as part of the consideration for the certificates."

"Told me that Randel *was largely* indebted to him, and that was the ground of his holding on."

Has never seen bill or answer.

Now, there is a remarkable conformity between this witness and Mr. Roberts. They both show a declaration of intention *to hold on* as a security to something, *not* the property of the respondent.

They both name Mr. Ingersoll as one of the persons contemplated by Mr. Brown, a fact of importance as to the *estimates* presented to our consideration.

They both concur, in naming Mr. Camac as a creditor, though not as to the exact trust in reference to him.

They both say, that Brown claimed to be a creditor without naming a specific sum.

They both, throughout, represent him as avowing himself in the position of only taking advantage (perhaps justly) of accidental circumstances to enforce claims, availing himself of an opportunity to secure supposed or real rights.

These two witnesses are confirmed by Thomas Janvier, jun., who says:

"He was at my father's last winter to enquire what testimony could be given by me in this case. In the course of that conversation, he gave me a history of the transactions upon which this case is founded, and told me that Randel had given him these certificates which are now in controversy, *for the purpose of negotiating a loan to enable him, Randel, to pay certain debts he had contracted, debts due to Mr. Camac, Mr. Charles Ingersoll, and himself.* So far, *I recollect positively.*"

Cross examined.

"I am certain from the information of Mr. Brown, that the certificates were given for the purpose of negotiating a loan, to enable Mr. Randel to pay certain creditors. I am certain that he named Mr. Camac, Mr. C. Ingersoll, and himself, as creditors."

This is in exact correspondence with Roberts and Gray. How can we doubt the accuracy of an account, in the main features of which, they all concur. They all stand fairly before us, the attempt to discredit Roberts, having as we conceive failed.

Cornelius D. Blaney, though not very particular, accords with them. So far as he goes, he was but a partial participator in the conversation between Brown and Roberts.

But he speaks of the certificates "being retained," and is certain that Mr. Brown did not mention that the certificates were given to him in payment of a claim to himself.

"Recollects the Camac debt."

"I do not remember that he stated how the certificates came into his hands. I remember he said, that the certificates *were retained* by him for the purpose of being applied to the payments of certain claims in Philadelphia, which he considered himself bound in honor to see paid. He may have mentioned partly for the settlement of his own claim for services." "I am not sure he did."

"The impression was, that [he] had a claim upon Mr. Randel, which was unsettled, that he had retained those certificates to be applied to the settlement of these claims which he said Mr. Randel ought to settle before he went to the south, and for that purpose he had taken them into chancery and deposited them there. I am certain of this fact, that Mr. Brown, on that occasion, did not mention that these certificates were given to him in payment of a claim to himself. I am positive of that fact."

It is remarkable, that to none of these persons did the respondent state the fact that he had transferred these certificates into his own name.

It is remarkable, that if at that time he did entertain the same clear and positive conception of his rights which is set forth in the answer, he did not simply and plainly state that right, and say, "they were given to me in payment, or part payment, of my own claim and of my liability to Mr. Camac."

We cannot close our minds to the force of the testimony of these four persons. It has been ably urged, that evidence gathered from the declarations of a party is unsafe, peculiarly liable to the effects of misapprehension, of inattention, of defect of recollection—that a word omitted or displaced may change the whole character of the declaration. We have felt the force of the argument, but it does not prevail against the influence of the concurring testimony of four intelligent and respectable men, giving a very uniform account of the respondent's representation of his own case, and, in relation

to the question of trust, giving such a narration as to lead to one and the same result. We have observed, too, that it is the same species of evidence upon which the respondent asserts his alleged contract with the complainant, which contract he states in his answer, in the words or declarations of the complainant alleged to have been uttered to himself at a time much less recent than his own declarations to the witnesses.

The testimony of these witnesses, then, establishes, in our opinion—and accordingly we find and so report—

1. That the delivery of the certificates by the complainant to the respondent was not absolute, but upon a trust.

2. That the trust was to raise money.

3. That of the money so to be raised, part was to be paid to Mr. Camac; and that, as to this part, the respondent had a direct interest in the execution of the trust, in consequence of his acceptance of the draft in favor of Mr. Camac, referred to in the answer, and of his re-transfer of the interest in the judgment upon which the draft was drawn.

4. That another portion of the money so to be raised, was to be paid to Mr. C. Ingersoll.

5. That no express appropriation of the balance, or any part thereof, was made at the time by the complainant in favor of the respondent.

6. But that an intention had been declared previously, by the complainant, to pay or present to the respondent, through the medium of such certificates, a sum of money, the amount of which was not stated or specified, as a compensation or remuneration for his services during the pendency of the suit with the Chesapeake and Delaware Canal Company; but we do not find that any express reference to such declared intention was made at the time of the transaction.

7. That, in point of fact, no money was raised upon the certificates.

8. That, on Monday, the twenty-fourth of October, 1836, the certificates were transferred by the respondent (under the power of attorney) to himself, and so remain; and

9. That, since the filing of the bill in this case, the complainant has parted with all the remaining certificates of debt due to him by the said Chesapeake and Delaware Canal Company.

We proceed to state our views of the alleged indebtedness of the complainant to the respondent.

That the complainant was indebted to the respondent in some amount, we do not doubt. Independent of the allegations in the answer, the witnesses upon whom the complainant relies, concur in stating that the respondent, as part of the declarations relied upon by the complainant, always affirmed that fact. All the witnesses, upon both sides, agree in asserting that the services rendered by the respondent to complainant were important, valuable,

continued through a period of several years at intervals, and rendered with great zeal and devotion; and some of the witnesses affirm them to have partaken of the character of confidential services, of a higher grade than those usually rendered. The correspondence leads to the same conclusion, and the principal counsel of the complainant, in his great suit with the Chesapeake and Delaware Canal Company, bears testimony, in some of his letters and in his deposition, to the value of the respondent's aid. No sufficient evidence has been produced to satisfy us that full compensation has been made to the respondent; and therefore, in arriving at the general conclusion above stated, we had little difficulty.

But as to the manner and amount of this indebtedness, we *have* found difficulty.

The respondent alleges, that the complainant was indebted to him for time actually expended in his service, for a stipulated per centage on the amount recovered in that suit, and for expenses incurred for the complainant's benefit; and, as part of the amount due for time, claims that two thousand dollars had been estimated and settled between them, as the proper amount up to a particular period, the eighteenth of September, 1834, and had been paid or secured to him, by marking to his use that amount of complainant's judgment against the company; the re-transfer of which, to the complainant, he says, formed part of the consideration for the delivery of the certificates.

He states the contract thus:

Soon after he embarked in the concerns of said complainant, the complainant told the respondent, that he found the value of his services to him would be great, and said that if he would devote his time and talents to his, the complainant's, interests in his suit with the Chesapeake and Delaware Canal Company, he would pay him a reasonable compensation for the time actually bestowed in his service; in any event, that he would pay the respondent's travelling and other expenses, during his absence from the city of Philadelphia; and that, in the event of success, he, the said complainant, would pay the respondent, in addition to this certain compensation, 2½ per cent. on the sum recovered in the said suit, instituted as aforesaid, by the said complainant, against the said Chesapeake and Delaware Canal Company.

This then is the contract set up by the respondent, composed of three ingredients, time, per centage, expenditures.

We do not recollect that there is any witness who professes to say any thing in relation to this alleged feature of the contract—time—to speak of it as part of a contract between the parties, *per se*. It would be natural, the law would imply it, or something like it. The difficulty arises from the *valuation* which, the respondent says, was actually put upon time, and from the complication of the question with per centage.

The respondent says, that he embarked in the service of the complainant in the spring of 1831.

No date is named in the answer, at which the alleged contract was made. It was not even in argument, nor could it have been plausibly assigned to a period more early than the commencement of 1832.

The respondent had no pretension, prior to that date, nor indeed, as we think, to a still later date, to the possession of such a knowledge of Mr. Randel's cause, or of such a hold upon his regard, as to have entitled him to ask or expect such a contract. He was, if an intelligent man, an unadmitted student of the law, unpractised and inexperienced in business; and it was admitted in argument, that up to the latter end of December, 1831, his services were merely those of a clerk. Then it was suggested, and the evidence supports the suggestion, they became more confidential, and resembling those of an agent; and, in the summer of 1832, when he was sent down to New Castle, in consequence of Mr. Clayton's demand for an amanuensis, and acted as such for that gentleman, while he was preparing a voluminous mass of special pleas, he is supposed to have acquired that accurate knowledge of the case, which afterwards rendered his services important, and we think the evidence gives strength to this theory too.

Besides, in the month of August, 1831, he borrowed from complainant eighty dollars, which he asked for in a letter of 19th of that month, containing language which could not have been used by a creditor, expressing great hesitation, and "almost shame," at making the request, and using this expression, "You may well suppose that nothing but circumstances, such as now occur, would induce me to apply to you for the loan of money; but if you think that my services, to be rendered to you until the final adjustment of your suits, would be an equivalent to *you*, for such a sum, it would be more desirable to me, under present circumstances, not to borrow, where I may be under the disagreeable necessity of postponing payment."

It is clear, therefore, to our minds, that at the date of this letter, no such contract could have existed, nor do we perceive any evidence of such service rendered, or of such progress in the affairs of complainant made, or of such knowledge of his cause acquired by respondent, prior to the summer of 1832, as to justify a presumption that the relations between the parties indicated by that letter, could have undergone any change prior to that time. On the contrary, in September, 1831, we find respondent writing to complainant, that he intended giving him one-half that month of his time, and thought it was what the complainant had a right to, and that he would endeavor to be at New Castle early the next week. The letter was addressed to Mrs. Randel, the complainant being at that time absent.

We think, therefore, that we are bound to assume, that if such contract was made, it could not have been at an earlier date than in

the spring or summer of 1832, more probably the latter, after the special pleas were drawn, as stated in Mr. Clayton's deposition.

This brings us then to the consideration of the allegation, that the transfer to respondent of the two thousand dollars, part of the great judgment, was "in payment, up to that period, of the time expended by the respondent in the service of the complainant, under the beforementioned agreement between the said complainant and respondent."

Does the evidence support or rebut this allegation?

Thomas Janvier in his deposition says, that the respondent told him "the object of the judgment transferred to him, which was to enable him to attach tolls." "He stated no other object as connected with that transfer, or independent of it."

We regard the testimony of this witness as contradicting the allegation. It is confirmed by the fact in evidence, that respondent was occupied in attaching tolls immediately after the transfer.

Then if we assume the date of the alleged contract to be, as before suggested, in the spring or summer of 1832, the date of the transfer being the 18th of September, 1834, (document C, attached to answer,) we have the sum of two thousand dollars paid "for the time expended" during the period of 26 to 30 months. And, in another part of the answer, the respondent informs us that a note of three hundred dollars (document B) was paid to, and accepted by him, from the complainant, for time expended from the said 18th of September, 1834, to the 18th of April, 1836, a period of 19 months.

Upon a careful consideration of the evidence as to the services rendered, and the probable expenditure of time during these two periods, we cannot discover any rule by which these widely different sums, $2,000, and $300, could have been attained, as results from any common measure of the value of time. Much, very much, is left to conjecture, as to the actual expenditure of time; but we can discover nothing to account for this very great disproportion in amount.

If, dropping the comparison between these sums, we look for a measure of value for "time expended," we find none agreed upon, and in the measures to be deduced from the arrangement made with other persons of intelligence employed in and about that cause, as detailed in the testimony, we can discover none that would lead to so large a result; and as the amount of the judgment was then known upon which, according to the allegation, the 2½ per cent. was to be charged, it is fair to presume that in any payment for time the parties would have adverted to the amount of the per centage as one element in the assessment.

There is other evidence in opposition to the allegation.

The respondent says, that the transfer was made to him upon his urgent and repeated request, at a time when he was so sick that it was by no means certain he would live.

Now we find that on the 26th of September, 8 days after the transfer, the complainant drew a bill (document A) upon this respondent, in favor of W. M. Camac, or order, for the sum of two thousand dollars, to be paid "out of" this very sum, so transferred, or the first moneys obtained from the company on account of it, or *from tolls.* This bill was accepted by respondent.

It appears to us extremely difficult to account for this acceptance, (which amounted to an abandonment of the fund just obtained, with so much difficulty, and under such peculiar circumstances,) if the real ownership of the $2,000 was in respondent. The draft seems to us to aver ownership in the complainant, and the acceptance to be an acknowledgment to that effect by the respondent; and the reference to the tolls we regard as a confirmation of Thomas Janvier.

We have, upon a careful consideration of the evidence, come to the conclusion, that the weight of testimony is against the allegation that the transfer of the two thousand dollars was in payment for time expended.

Yet although this $2,000 may not be considered as having been transferred in payment for time, it may be that something is due on that account—a matter on which we will express our conclusions after briefly considering the evidence relating to the contract.

The contract is sworn, by the respondent, very unequivocally, to have been made. It does not, in itself, appear to be an improbable contract if considered to have been made after his services began to be important and to be appreciated.

The contingency of 2½ per cent. might result in much, or in little, or in nothing at all. There was previous acquaintance, personal intimacy and confidence, a devotion not to be expected from an active practitioner at the bar, and service carried into matters not usually considered as strictly within the scope of the profession.

The complainant himself, in his bill, admits that he had determined to make respondent a present, and the line between a present, in consideration of services, and a sum claimable as contract, is not perhaps very broad.

The clear and explicit oath of the respondent is confirmed to some extent by several witnesses.

It is supposed to be very strongly and absolutely confirmed by the testimony of Mr. Telfair, who says distinctly, in three places, that Mr. Randel told him he was to pay 2½ per cent. on the amount to be recovered to the respondent.

There are, however, some difficulties in Mr. Telfair's account, which deduct greatly from the confirmation claimed through him. He was fifteen months in Mr. Randel's service, and left that service, and New Castle, in August, 1831. He was not in New Castle again till 1834, at the time of the trial. He admits, upon cross examination, that this information must have been received from Mr. Randel, in New Castle, in 1831. He "supposes so." Yet he couples, always, the allegation that respondent was to receive 2½ per cent.

with the allegation that Mr. Clayton was to receive 10 per cent.; and states the information as to both to have been received from Mr. Randel, at the same time. Now it is certain that Mr. Clayton had no contract with complainant for 10 per cent. until December, 1831, and had not until about that time consented to embark in the cause; and we think it also clear, for reasons given in a former part of this report, that the complainant himself could not have held such a contract so early as in August, 1831.

It is apparent, too, from Mr. Telfair's deposition, that he had received from the complainant injurious language, sufficient to cause very great anger and indignation. He denies, however, the existence of any unkind feeling.

In matters of mere date there is always a possibility of mistake in the clearest intellect; and while, therefore, we consider the weight of Mr. Telfair's testimony to be much diminished by these and other circumstances, we do not entirely dismiss it.

There are two other witnesses who give some degree of confirmation to the allegation of the 2½ per cent. contingency. J. W. Folwell affirms positively that he heard complainant make a declaration to that effect.

"I do know what compensation the said Brown was to receive, and that it was a contingent compensation." I have heard the said Randel say that he was indebted to the said Brown in a large amount, and that he would settle and pay him when he got a settlement with the company. Randel also told me that he was indebted to the said Brown in a per centage on the amount to be recovered on his judgment against the said company. Mr. Randel told me he was indebted to the said Brown in a very large amount, &c.

This witness was examined under a commission. No cross interrogatories were filed, because the respondent would not give the name of the witness to complainant's counsel—for reasons which he considered sufficient. But the deposition has been received as evidence, and a commission to cross examine might have been taken. His testimony we consider as entitled to weight, though not so great as if there had been a cross examination. An effort to discredit him, upon the ground of want of veracity, was made, but it did not, in our estimation, succeed.

There was also a witness, Samuel Sutton, relied upon as confirming the allegation of contract. The amount of his testimony on this point is, that he heard something said about per centage in a conversation between complainant and respondent—he don't remember precisely what, but remembers that immediately afterwards respondent said to him: "By George, do you mind that." To which he replied: "I wish he would say as much to me."

This does not appear to us to have much weight. It might almost authorize the belief that this very conversation was the epoch of the promise, and it is clear that it occurred after the date of the judgment.

The character of this witness was also attacked, and we think so far successfully as to lessen reliance upon his story.

It will be observed, however, that none of these witnesses speak of *time*, as part of the contract, they go to per centage merely.

Thus, then, upon the question of contract, there is the evidence of the answer confirmed in the degrees above specified by the witnesses above named.

What is there in contradiction?

The four witnesses before referred to—Messrs. Roberts, Blaney, Gray, and Janvier. While we regard the testimony of these witnesses as disproving the assertion, that the certificates were transferred without the qualification of a trust, we do not conceive that this is necessarily incompatible with the existence of the contract. In the very conversations which support the idea of trust, the respondent always asserted large indebtedness to himself from the complainant.

We think, indeed, that it is extraordinary he did not plainly state the manner and amount of that indebtedness, but for this there may have been, or there may not have been, sufficient reasons. The absence of this feature we regard as but a circumstance inducing suspicion, but not amounting to contradiction; and we are disposed to view the testimony of Mr. De Witt in the same manner. The respondent solicited his interference with the complainant, in terms certainly not indicative of settled right, of ascertained contract, and more resembling a request for gratuity. But Mr. De Witt does not profess to give language, but impressions—strong ones, it is true, but still only impressions—and it must be borne in mind that Mr. De Witt has, in some degree, admitted the possible existence of inaccuracies in his testimony, by a statement subsequently made in writing to the respondent, and in evidence before the masters; yet here again we think the absence of a plain and peremptory assertion of right is ground of suspicion, but we do not think it disproves the fact set up, because it is not of necessity incompatible with that fact.

Upon the whole, weighing as carefully as we could the evidence, we have not found such weight of testimony, on the part of the complainant, as to overthrow the unequivocal assertion of the answer, with the corroboration, slight as it may be, received from the other witnesses.

We state frankly to your honors, that, having felt ourselves compelled to decide against the allegations of the answer in two material points, we hesitated whether we were at liberty to regard it as entitled to be taken as evidence of this matter of contract. We had strong doubt; but we have believed, that as it might well happen to a defendant to err or mistake in some points, and yet be right in others—and as it might also happen that, in point of fact, a defendant might be perfectly right and perfectly true in all his allegations, although the evidence should be the other way—we

were therefore not at liberty to reject or undervalue the statements of the answer on this point.

We have therefore concluded, and so report our opinions, that such a promise was made by the complainant, as the respondent has set forth.

But we have further concluded, and do so report, that nothing is due to the respondent for his time expended.

It is in evidence, by Mrs. Massey and others, that the respondent received money, from time to time as he wanted it, in the same ways as the other employees of the complainant. That he had no other resource for his support (except through the medium of his relatives) than his occupation with complainant. That he boarded and lodged in New Castle, generally, with complainant. That when at taverns, on some occasions at least, his bills were charged to, and paid by, complainant. The alleged contract contains no measure of value; the respondent has not set out any, except in the supposed payment by transfer of two thousand dollars, which we have considered to be disproved; and the whole evidence on this particular branch of indebtedness we consider to be so loose and unsatisfactory, as not to put it in our power to say that there is any certain amount due and unpaid, from complainant to respondent, for his time.

We arrive at the same conclusion in relation to any claim for disbursements. Disbursements there were, but we think the evidence shows they were repaid, and we report nothing due on this account.

But we think, and so report, that for labor and services rendered by the respondent to the complainant, for his use and at his request, there was and is due a sum equal to two and one-half per cent. on the amount of the judgment recovered against the Chesapeake and Delaware Canal Company by the complainant, to wit, the sum of fifty-six hundred and fifty-nine dollars and sixty-four cents. And this conclusion we come to, not only for the reasons already stated, but because we think that, if there were no special contract, the amount would not be too large as a *quantum meruit* for the zeal, devotion, fidelity to his employer, and valuable service actually rendered at every stage of the proceedings, uniformly attributed to the respondent by almost every witness on either side of this cause.

We further report to the court, that it has been stated to us by the parties and counsel on both sides, that the debt due by the complainant to Mr. Camac has been paid to Mr. Camac by the complainant since the cause commenced; and we respectfully refer to the schedule hereto attached, marked A, as our report of all the evidence taken in the cause.

The undersigned further beg leave to state, that in this report they have referred only to the prominent testimony in the cause, without specially noticing many other minor pieces of evidence, a

reference to, and examination of which, would have expanded a paper already long beyond all reasonable bounds.

The undersigned, in the execution of that branch of their duty which requires them to report what sums of money have been paid by the plaintiff to the defendant for or on account of disbursements made by defendant, time, labor expended, or services rendered, and whether any sum is yet due to defendant therefor, and to what amount, report as follows:

The plaintiff contended that he had proved payment of the following sums to the defendant, and threw upon him the burthen of showing the appropriation of them to time, disbursements, labor, or services, viz:

This sum paid defendant by plaintiff's check; cashed by Janvier's father, (proved by Janvier, p. 12.) - - -	$100
This sum paid defendant's mother for him on account of journey to Washington, - - - -	70
Check, dated August 15, 1831. Plaintiff to order of defendant on Farmers' Bank, New Castle, - - -	10
Check dated Sept. 1, 1832, - - - -	30
" May 19, 1835, Girard Bank, - -	10
" Sept. 11, 1835, Farmers' Bank, New Castle,	120
" Sept. 13, 1835, " " -	200
" Oct. 9, 1835, " " -	500
	$1,040

In addition to these payments, which we consider proved, the plaintiff alleged a payment of sixty dollars to defendant by check, dated 7th March, 1832, which being payable to bearer, and not brought home to defendant, we do not consider proved. Also a sum of eighty dollars which the defendant asks for in his letter to plaintiff of 19th August, 1831, in which he says, "I must frankly tell you I can't repay you soon." "If you think my services up to the close, &c. would be equivalent." It was contended by defendant, that this was a loan and not a payment for services, &c., and that this loan was repaid by defendant's services during the summer of 1831.

We are inclined to take this view of it, and disallow this as a payment.

The plaintiff further contended, that he had shown by the testimony of Mrs. Massey various payments to defendant.

The testimony of this witness is so indefinite upon this point as to create great embarrassment; she certainly proves the payment of forty-five dollars by plaintiff to defendant. Beyond this sum we think her evidence too uncertain to give rise to any definite charge.

In our opinion, therefore, the plaintiff has proved payments to the defendant of $1,085.

On the other hand, the defendant contended, that he had made various payments on account of plaintiff; the following we consider established by the evidence:

Jan. 1, 1833,	paid	Stancliffe & Draper, (in Draper's deposition.)	- -	$76 00
Jan. 28,	"	" Frazer for boarding,	- - -	22 00
Dec. 30,	"	" Telfair,	- - -	10 00
"	"	" expenses to Washington,	- -	70 00
"	"	" balance of account,	- - -	9 25
"	"	" Sutton,	- - - -	20 00
		discount renewal C. J. Ingersoll's note,		28 00
Oct. 30, 1835,	"	E. J. Axford,	- - -	44 75
Feb. 17,	"	" E. D. Ingraham,	- - -	25 00
Mar. 20,	"	" "	- - -	10 00
Sept. 12,	"	" Freeman for an orrery, (see Freeman's deposition.)	- - -	120 00
Sept. 17,	"	Deposited in Girard Bank,	- -	150 00
19,	"	" "	- -	50 00
Oct. 13,	"	" "	- -	400 00
Dec. 11,	"	" "	- -	40 00
				$1,075 00

The evidence as to the last four sums, consisted of checks on the Schuylkill Bank: the first payable to J. J., jr., or bearer; the other three to John Randel, jr., or bearer, for the above amounts, respectively.

It was proved by Mr. Croskey, the first book-keeper of the Schuylkill bank, that these checks were paid by the bank; and Mr. Lewis, the cashier of the Girard Bank proved, that on the days on which the above mentioned checks bear date, respectively, deposites were made of the amounts contained in the checks, respectively, in the Girard Bank to the credit of the plaintiff.

Taking the whole evidence, particularly the fact of Brown's being Randel's sole agent in Philadelphia, and by comparison of dates, we are satisfied that the connexion is established between the sums paid by Randel to Brown, on the 11th and 13th September and 9th October, and those paid by Brown for the orrery, and deposited in the Girard Bank; in other words, that the $120, paid 12th September for the orrery, was an appropriation to Randel's use by Brown of the same sum paid him by Randel by check of 11th September; and that the sums contained in the checks deposited by the defendant in the Girard Bank to the credit of plaintiff were appropriations of the moneys that had been previously paid to him on the 13th September and 9th October to Mr. Randel's use.

After allowing Mr. Brown credit for $1,075, paid by him as above, there remains a balance of ten dollars, which is to be applied to Mr. Randel's credit on the general account.

All which is respectfully submitted by

J. M. SCOTT,
T. J. WHARTON.

A.

Schedule of the deposition taken in the cause.

Benjamin A. Janvier,	29th May, 1837.
Thomas Janvier, jr.,	2d June, 1837. 12th March, 1838.
Thomas Booth Roberts,	12th March, 1837. 27th March, 1837.
Cornelius D. Blaney,	27th March, 1837.
William H. Vining,	27th March, 1837.
Rich'd Varick De Witt, (taken under comm'n,)	8th.
Andrew C. Gray,	27th.
Thomas Stockton,	27th.
John M. Clayton, (taken under commission,)	7th April, 1838.
Sarah Massey,	12th March, 1838.
Allen Campbell,	19th March, 1838.
John Telfair,	20th Sept., 1837.
Samuel Sutton,	26th July, 1837. 5th Oct., 1837. 8th Nov., 1837.
James Rogers, esquire,	19th March, 1838.
James A. Bayard, esquire,	20th Sept., 1837.
William D. Lewis,	26th July, 1837.
Alfred Croskey,	29th Aug., 1837.
William H. McCullough	21st Sept., 1837.
Elihu Jefferson,	21st Sept., 1837. 15th March, 1838.
Edmund Draper,	8th Aug., 1837. 20th Oct., 1837.
James Frazer,	8th Aug., 1837.
Matilda Frazer,	8th Aug., 1837.
Ed. J. Axford,	26th July, 1837.
T. W. S. Freeman,	8th Aug., 1837.
Daniel B. Lippard,	8th Aug., 1837.
Nathan Bunker,	7th Nov., 1837.
Frederick Brown,	8th Aug.
John Albertson,	12th March, 1838.
James Gardner,	13th March.
J. S. Gardner,	13th March.
Elijah Brown,	16 & 17 Mar. 1838.
Sarah L. Peters,	12th March, 1838.
John Wilson,	12th March, 1838.
Howard Ogle,	14th March, 1838.
John T. Jones,	14th March, 1838.
Joseph Reeves.	
William B. Reeves.	
Isaac Gilbert.	
Peter Albright,	15th.

Elihu Jeff., - - - 19th.
Robert A. Williamson, - - - 16th.
Jesse Williamson.
John F. Barr.
John M. Cathcart, - - - 17th.
James Galloway.
Isaiah Bell, jr.
Jacob Rocap.
George Wilson, - - - 19th.
William Ridgway, - - - 16th.
Thos. Leaming Smith, Esq., - - 8th May, 1837.
O. K. Barrell, - - - 29th April, 1839.

Under commission to Albany.

Richard Varick De Witt, Boston, - - } 8th Dec., 1837.
Job W. Folwell, - - - }

To Dover.

John M. Clayton, - - - } 7th April, 1838.
} 30th Sept., 1839.

To New Castle.

Joseph Lafferty, - - - 6th Sept., 1839.
Thomas Janvier, jr., - - - 7th Sept., 1839.
Andrew C. Gray, - - - 9th Sept., 1839.

To St. George's.

James N. Sutton.
Benj. Cooper.
John Sutton, jr.
William P. Veach.
Samuel Ford.
John Ash.
Thomas Janvier, jr.

Depositions taken before the masters.

Peter Leslie, - - - 4th June, 1839.
John Sergeant, Esq., - - - 19th Sept., 1839.
Job R. Tyson, Esq., - - - 19th Oct.
James C. Mansfield, - - - 22d Oct.
William Kinsey, - - - 4th Nov., 1839.
Robert R. Levick.
Isaac W. Norris, - - - 13th.
William E. Bladen, - - - 13th.
Thos. Booth Roberts, - - - 22d.
Robert Levick, - - - 28th.
Elijah Brown, - - - 28th.
Samuel Stevenson, - - - 28th.

I concur in opinion—

That there was a contingent contract for the payment of 2½ per cent. on the amount recovered from the canal company, by the complainant to the respondent.

And that the transfer of the certificates in question was not in absolute payment, but in trust to raise money, out of which Mr. Camac was to be paid.

But I go farther, in thinking that Brown's own debt was to be paid out of the residue, although the amount of that debt may not have been, and probably was not, stated at the time of the transfer.

On this point, I do not conceive the evidence of the complainant as outweighing the answer.

I am likewise of opinion the $2,000 contract is not disproved by evidence sufficiently strong to deprive the answer of the weight given to it by the rules of equity.

The answer is strongly corroborated by the transfer, to the respondent, of an interest to that amount in the judgment against the canal company; a transfer which I cannot allow the complainant to say was the purpose of attaching tolls, as that would seem to me to involve him in an attempt to violate the 7th section of the act of the Legislature of Delaware, passed 24th March, 1770, on which I lay great stress. In forming my conclusions, which are submitted with great distrust, I am mainly influenced by the effect which I conceive equity gives to the answer of the defendant, as responsive to the bill.

In other respects, I concur in opinion of the other masters.

P. McCALL.

JOHN RANDEL, JUNIOR, *vs.* WILLIAM LINN BROWN. } Circuit Court United States, &c.

Exceptions to the masters' report, on the part of the complainant.

1. The complainant excepts to so much of the report as states, that for labor and services rendered by the respondent to the complainant for his use, and at his use, and at his request, there was, and is due, a sum equal to 2½ per cent. on the amount of the judgment recovered against the Chesapeake and Delaware Canal Company by the complainant, to wit: the sum of $5,659 $\frac{64}{100}$ for the following, among other reasons.

1. Such report is founded upon the defendant's answer, which is not in this particular responsive to the bill.

2. The contract alleged is disproved by testimony.

3. The contract as alleged is in its nature champerty.

4. The contract as alleged is altogether inconsistent with the defendant's condition as a person claiming to receive, and was actually receiving witness money in the cause, on the success of which, his contingent compensation was declared to depend.

5. The defendant cannot set up such a contract after having placed himself in the attitude of a witness in the cause against the Delaware and Chesapeake Canal Company, and after having been paid as such.

6. The defendant's answer was already discredited.

7. The testimony of Telfair, referred to in the report, is shown by the report and by its own tenor, not to sustain the allegations of the answer.

8. The testimony of Folwell and Sutton is discredited, and if not discredited, does not prove the alleged contract as stated in the answer.

9. The alleged contract is at variance with the defendant's own correspondence and communications, and his contract for the same services for which the per centage is claimed, and actual compensation made.

10. The alleged contract is without any adequate consideration, and the proof was clear, that there was not an entire devotion of the defendant's attention to the complainant's interests, which was the alleged consideration in fact.

11. The alleged contract is unsustained in fact or law.

12. The alleged contract is irrelative to the matters in controversy.

2. The complainant excepts to that part of the masters' report which finds a contract or alleged contract on the part of the complainant, to pay the defendant 2½ per cent. on the amount of the said judgment, inasmuch as such alleged contract can have no connection whatever with the receipt of certificates of canal stock by the defendant from the complainant, "or the terms, consideration, and condition of the transfer thereof."

3. The complainant excepts to the masters' report—

1. Because it omits to notice the allegation and argument on the part of the complainant, that the contingent compensation alleged to be due to the defendant, if it has any foundation whatever, rests upon a contract which would be void on the ground of champerty.

2. Because it omits to notice in detailing the circumstances, the fact that the defendant stood in the relation of a witness towards a cause in which he claims a contingent compensation.

3. Because it does not give effect to the testimony of R. V. De Witt, which is clearly contradictory to the allegations of the defendant.

4. Because it omits to notice, the proof of the defendant's other engagements and pursuits, during the period when compensation is regarded as due for his entire devotion to the complainant's interests.

4. The complainant excepts to the masters' report, because it finds that a contract existed, whereby the complainant became indebted (as it supposes) to the defendant, after having truly reported that the certificates of canal stock were delivered to the defendant upon a trust to raise money, and therefore not in consequence of, or in connection with, a debt.

5. The complainant excepts to the masters' report, inasmuch as it may imply that the defendant, in receiving the certificates of canal stock in trust, had any existing or contemplated agency in the payment or appropriation of the expected proceeds.

6. The complainant excepts to the masters' report, because it states that the money to be raised from the canal certificates was to be paid to Mr. Camac and to Mr. Ingersoll.

7. The complainant excepts to the masters' report, because it finds that since the filing of the bill, the complainant has parted with all the remaining certificates of debt due to him by the said Chesapeake and Delaware Canal Company.

8. The complainant excepts to the masters' report, because it states that an intention had been declared by the complainant, to pay or present to the defendant through the medium of said certificates, a sum of money as a compensation or remuneration for his services.

9. The complainant excepts to the masters' report, because it finds a contract to have been made in 1832, which is asserted in the answer of the defendant to have been soon after he embarked in the concerns of the complainant, and the defendant's correspondence proves that it could not have taken place in 1832, and in this corresponds with Telfair's testimony.

10. The complainant excepts to the masters' report, because it is founded on the following, among other, admissions of testimony.

1. The testimony of Job W. Folwell.
2. The correspondence between the defendant and R. V. De Witt.
3. The second and third depositions of Samuel Sutton.
4. The depositions of J. Gardiner, J. L. Gardiner, Ridgway & Williamson, Cathcart, Bell, Rocap, Rogers, Wilson, and Levick, and upon the following, among other, rejections of testimony—B. A. Janvier, Vining, Stockton, Thomas Janvier, Gray, Reeves, Campbell, Clayton.

J. R. INGERSOLL,
C. INGERSOLL,
For complainant.

MAY 12th, 1840.

RANDEL *vs.* BROWN. } In Equity, C. C.

The complainant protesting that the masters' report, together with the exceptions thereto filed, not having been returned on the first day of the court, succeeding the court when the same was signed or made up, and communicated to the complainant and the respondent, cannot be returned, consistently with the rules in equity, to the additional matter or report, signed or made up, and communicated to the complainant and respondent by the masters, the first instant, files the following exceptions:

I. The complainant excepts to so much of the said report as relates to the sum of money paid by the complainant to the respondent for, or on account of, disbursements made by the respondent, time, labor expended, or services rendered, and whether any sum is yet due to the respondent therefor, and to what amount, for the following, among other reasons:

1. Such report is founded upon the respondent's answer, which is not in this particular responsive to the bill.

2. The respondent gave no evidence, and furnished no account or statement of disbursements made by him, time, labor expended, or services rendered by him, so as to enable the complainant to disprove the same, and so as to enable the masters to report whether any sum is yet due to the respondent therefor, and to what amount.

3. The payments, considered by the masters as proved, of moneys by the respondent to the complainant's use, were not in fact proved.

4. The sum of eighty dollars was a payment, and not a loan, and was received by the respondent as an equivalent for his services, not as an equivalent for his services during the summer of 1831 only.

5. Mrs. Massey proves the respondent was paid in full.

6. The respondent was not proved to be complainant's sole agent in Philadelphia.

7. The evidence showed that the complainant was not the debtor of the respondent.

II. The masters should have reported that the respondent had disbursed certain small sums of money for the complainant, by the complainant placed in the respondent's hands for that purpose, and no other sums. That no satisfactory proof had been made by the respondent of time and labor expended, or services rendered, to the complainant, and no account or statement furnished thereof, and no case made out by him, of such tangible shape as to make it practicable for the complainant to bring evidence to bear upon it. That no sum is due by the complainant to the respondent, of any amount.

III. That the complainant continually and habitually paid money to the defendant, and placed funds in his hands without receipt or voucher, or the presence of witnesses, and it was impracticable to show the amount. It was so urged to the masters, and should have been so reported by them.

C. INGERSOLL,
For the Complainant.

February 6, 1841.

JOHN RANDEL, Jr., vs. WILLIAM LINN BROWN. } Circuit Court, U. S.—In equity.

April session, 1837.

Exceptions to decisions of masters, and report of majority of said masters.

The respondent files the following exceptions, viz:

1st. The masters err in their report, in omitting to state that the bill of complainant was without evidence to support it, in regard to any of its material allegations.

2d. Masters err in their report, in considering the evidence of Thomas Janvier, jun'r, A. C. Gray, T. B. Roberts, and C. D. Blaney, or either of these witnesses, as supporting, or applicable to the material allegations of the bill, touching the absence of all interest on the part of the respondent, in the certificates of funded debt referred to in complainant's said bill.

3d. Masters err in not considering the testimony of these four persons as contradicting bill of complainant.

4th. Masters err in admitting those parts of Andrew C. Gray's testimony, which were excepted to before the masters, as appears by the annexed exceptions to complainant's evidence.

5th. Masters err in not rejecting from their consideration the testimony of T. Booth Roberts, as a discredited witness, and in giving an erroneous effect to his testimony, when compared with the other evidence in the cause.

6th. Masters err in their report, in considering the testimony of Thomas Janvier, jr, and C. D. Blaney, as contributing to prove a trust to pay Camac and Mr. C. J. Ingersoll, in exclusion of respondent.

7th. Masters err in their report, in not considering the testimony of Thomas Janvier, jr., and C. D. Blaney, and the answer of respondent, as of weight superior to that of A. C. Gray and T. B. Roberts, respecting the objects and purposes of the transfer of the said certificates.

8th. Masters err in their report, in not considering the weight of testimony on the part of respondent, as greater than that of complainant, on the point of respondent's interest in the residue of the certificates, after the payment of the Camac debt, by the terms of the transfer.

9th. Masters err in their report, in not giving due weight to the circumstantial evidence in favor and corroboration of the account given in the answer, of the terms, manner, and consideration, of the transfer of the certificates.

10th. Masters err in their report, as follows: being under the 5th head of recapitulation, in regard to the effect of the testimony of A. C. Gray, Thomas Janvier, jr., T. B. Roberts, and C. D. Blaney,

"That no express appropriation of the balance, or any part thereof, was made at the time by the complainant in favor of respondent."

11th. Masters err in their report, in giving undue weight to the loose, and confessedly imperfect and contradictory statements of A. C. Gray and T. B. Roberts; and of C. D. Blaney, in those parts of his testimony in which it is supposed to coincide with theirs.

12th. Masters err in their report, because they irregularly refer to an advertisement characterized as highly derogatory to respondent, when no such advertisement was known by, or in evidence before them.

13th. Masters err in their report, in omitting to state that Thomas Janvier, jr., corroborates the answer in that particular, and that the ownership of the respondent, in the assignment of $2,000, is proved by the testimony of James Rogers, and by the oath of complainant himself, in a bill in equity in Maryland, and by the oath of the respondent in his answer to said bill.

14th. Masters err in their report, in omitting to state, in their remarks on the disparity between the sums of $2,000 and $300, in payment of respondent's time, that the former amount was assigned for time expended before the rendition of complainant's judgment against the Chesapeake and Delaware Canal Company, and that the latter was for a portion, only, of the time after that event.

15th. Masters err in their report, in stating that the weight of evidence in the cause, is against the ownership of respondent of the said $2,000.

16th. Masters err in the report, in not reporting the said $2,000 as belonging to respondent, and re-assigned, in the manner and for the consideration stated in the answer.

17th. Masters err in their report, in omitting material parts of Samuel Sutton's testimony.

18th. Masters err in their report, in laying stress upon a portion of R. V. De Witt's testimony, which is contradicted by his subsequent statement; that relating to respondent's placing his claim upon the footing of a gratuity merely.

19th. Masters err in their report, in stating that any part of the answer is contradicted by the evidence.

20th. Masters err in their report, in stating that nothing is due to the respondent for his time expended.

21st. Masters err in their report, in not stating that interest is due on the 2½ per cent., or $5,659 $\frac{64}{100}$ reported to be due to respondent, and in omitting to mention the time at which the interest is to commence.

22d. Masters err in their report, in not stating that respondent had an interest in the certificates in question, at the time of the transfer of them.

23d. Masters err in their report, in not stating that respondent now has an interest in said certificates.

24th. Masters err in not reporting that he was, at the time of such transfer, interested in them on his own account, to the amount due to him by complainant.

25th. Masters err in not reporting that he now has an interest in them to that amount.

26th. Masters err in not reporting that the original transfer of $2,000, part of the judgment of complainant against the Chesapeake and Delaware Canal Company, was made to respondent for his own use, for the purpose and in the manner stated in the answer.

27th. Masters err in not reporting what may enable the court to act upon the proof attempted to be adduced by complainant, of payments made to respondent; and in not reporting that the proof, or attempted proof, adduced by complainant under this head, totally failed, so far as regards the endeavor to show any payments made on account of the demands of respondent, of which he now claims the reimbursement out of the fund in controversy.

28th. Masters err in not reporting that complainant, before the transfer of the certificates in question, had declared a trust in favor of respondent as his creditor, by which respondent was entitled to receive payment out of the fund, of which said certificates formed a part; and that complainant has never executed that trust, otherwise than by the transfer in question, or unless such transfer was intended as such execution thereof. That the law of this court will therefore consider such transfer as having been intended to be made in execution thereof, more especially as the complainant has since transferred to other persons the whole residue thereof; and that, whether so intended at the time or not, (and although it were even true, as it is not, that the said transfer had been made for a different purpose, which has since failed,) yet the said trust will be held by the law of this court, and will be deemed in equity and good conscience to have attached itself to this fund, as the appropriate fund for payment thereof.

29th. Masters err in that part of the report which begins with the words "the testimony then establishes, in our opinion, and accordingly we find and so report"—under the first, second, fourth, and fifth points thereunder specified.

Masters are respectfully requested to report the manner in which, after repeated notices and requests, respondent and his counsel, in a late stage of the cause, obtained an inspection of the contract between complainant and John M. Clayton, referred to by complainant in his conversation with the witness, Telfair, and referred to, without an accurate statement of its contents, by the witness, Clayton; and are also requested to report the evidence and admissions in regard to certain checks given in evidence by complainant, in such manner as to present this part of the case for the consideration of the court, with an opportunity for exception, if necessary, after such report thereon; and if, as respondent is advised is not

to be expected, they should decline to report thereon, then to receive this as an exception to the omission so to do, and to fix a meeting for a hearing on these exceptions.

Respondent also prays an opportunity to except to errors and omissions in schedule A, referred to in the draught of the report, but not as yet exhibited, when the same shall have been exhibited to the parties or their counsel—if he shall then be advised that it is necessary so to do.

Presented to and filed with the masters, within ten days after notice of the report being signed by the majority of the masters.

CADWALADER,
J. R. TYSON,
Solicitors for Respondent.

May 13, 1840.

JOHN RANDEL, Jr.
vs.
WILLIAM LINN BROWN. } Circuit Court, U. S.—In equity.

Defendant excepts to draft of the masters' report, read on the 31st day of January, A. D. 1841.

First. Defendant excepts to the admission of the whole sum of $70 as a charge against him, as money paid him for journey to Washington; $30 of this sum being proved to have been paid to Mr. Clements.

(Vide T. Janvier, junr's first deposition in cross examination, p. 82; Randel's letter to Brown, of 22d February, 1833; deposition of James Rogers, and Clement's receipt.)

Second. Defendant excepts to one of two charges against him, each for $100, (either the first named item of $100, or that under date of February 5, 1834, for $100,) the evidence proving one payment only.

(Vide T. Janvier, junr's testimony, at the close of his first deposition, page 82, and date of check, showing it to be one and the same payment.)

Third. Defendant excepts to the charge of the whole of the items testified to by Mrs. Massey—some of them being included in other charges made against him.

Fourth. Defendant excepts to the masters' report, because they have not allowed him a credit for the amount of his travelling or other expenses, incurred by him whilst engaged in the complainant's business.

J. R. TYSON,
For Respondent.

Philadelphia, February 10, 1841.

JOHN RANDEL, JR., vs. WILLIAM LINN BROWN. } In Equity.

Circuit Court of the United States, October Session, 1837.

This cause came on to be heard upon bill, answer, replication, masters' report, exhibits, depositions, and exceptions to report; and the court, having seen and heard the exhibits and evidence in the cause, and heard the arguments of counsel, and having fully deliberated thereon, reserving to themselves the right of making such further decree as they may deem right, do order and decree, that the exceptions to the masters' report be disallowed, and that there is due by the complainant to the respondent the sum of five thousand six hundred and forty-nine dollars and sixty-four cents, with interest thereon from the fifth day of May, 1840, making together the sum of six thousand one hundred and thirty-six dollars, which said sum shall be paid and satisfied by and out of certain certificates of debt, or the proceeds thereof, given to the complainant by the Chesapeake and Delaware Canal Company, and now under the control of the court. And it is further ordered that the costs of this suit, including the fees of the masters, be divided between, and equally paid by, the said complainant and respondent.

HENRY BALDWIN,
JOS. HOPKINSON.

October 5, 1841.

Whereupon, afterwards, to wit., on the fifth day of October, in the same year, (1841,) the complainant aforesaid, by Joseph R. Ingersoll, Esq., his attorney, prays leave to appeal, from the decree aforesaid, to the Supreme Court of the United States; and the same is allowed. And on the fifteenth day of October, in the year aforesaid, the defendant, by Job R. Tyson, Esq., his attorney, also prays leave to appeal, from the decree aforesaid, to the Supreme Court of the United States; and the same is allowed.

JOHN RANDEL, JR. vs. WILLIAM LINN BROWN. }

Specification and assignment of causes of the appeal entered on behalf of the appellant, Wm. Linn Brown.

First. The court below erred in disallowing this appellant's exceptions to the report of the masters.

Second. The court below erred in confirming the masters' report, in that part thereof in which they state, or profess to state, the terms, consideration, and conditions of the transfer of the two certificates of debt referred to in the pleadings.

Third. The court below erred in confirming the report of the masters, that there was due to appellant, for the causes therein

mentioned, the sum of five thousand six hundred and forty-nine dollars and sixty-four cents, when a much larger sum, to wit., the amount claimed in the answer, was due to him therefor.

Fourth. The court below erred in confirming the said report, that the sum of two thousand dollars, with interest, was not due to the appellant, in addition to the sum of five thousand six hundred and forty-nine dollars sixty-four cents, reported to be due to him.

Fifth. The court below erred in not allowing to the appellant the interest on the said sum of five thousand six hundred and forty-nine dollars sixty-four cents, from January, one thousand eight hundred and thirty-four.

Sixth. The court below erred in not allowing the respondent the said sum of two thousand dollars, with interest, in addition to the said sum of five thousand six hundred and forty-nine dollars and sixty-four cents.

Seventh. The court below erred in not dismissing the complainant's bill.

Eighth. The court below, so far as they have decreed in complainant's favor, have proceeded without allegations in the bill, or proofs in the cause, to sustain the decree.

Ninth. The court below erred on rendering a decree, in favor of complainant, to any extent, because the proofs on which the same is founded did not present a case conformable to the allegations of the bill.

Tenth. The court below erred in decreeing that the respondent should pay one-half of the costs.

Eleventh. The court below erred in not decreeing that the complainant pay the costs.

Twelfth. The decree is, in other respects, erroneous, defective, informal, and insufficient.

UNITED STATES,
Eastern District of Pennsylvania, sct:

I certify the foregoing to be a true and faithful [copy] of the record and proceedings of the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit in equity therein lately depending between John Randel, jr., complainant, and William Linn Brown, defendant.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, at Philadelphia, [L. S.] this eighteenth day of January, A. D. 1842, and in the sixty-sixth year of the independence of the said United States.

FRA. HOPKINSON, *Cl'k. Circuit Court.*

Citation on appeal by Respondent.

UNITED STATES,
Eastern District of Pennsylvania, sct:

To John Randel, junior, a citizen of the State of Delaware, greeting:

Whereas on the 15th day of October, in the year 1841, William

Linn Brown, one of the defendants in a certain cause in the Circuit Court of the United States for the eastern district of Pennsylvania, in equity, wherein you are complainant, and the said Brown and the Chesapeake and Delaware Canal Company, defendants, did enter his appeal from a decree of the said circuit court in said cause, made on the fifth day of the same month; and on the day first aforesaid did present his petition to the Supreme Court of the United States, praying that the said decree and the proceedings in the said cause might be certified, transmitted and sent to the said court, and filed and docketed with the clerk thereof, without delay; and that the said decree might be reversed, and that the said court might proceed therein as the said case might require; and that the said appellant having given good and sufficient security well and truly to prosecute his said appeal to effect, and answer all such costs as upon an affirmance of the said decree of said circuit court may be adjudged to the said appellee, you are hereby cited to appear (if you see cause) at the said supreme court, at the city of Washington, being the seat of National Government, on the second Monday in January next, to answer to the said appeal, and to the causes thereof, assigned by the said appellant.

Given under my hand and seal, this fifteenth day of October, A. D. 1841.

HENRY BALDWIN, [L. S.]

In the Circuit Court of the United States for the eastern district of Pennsylvania.

JOHN RANDEL, junior,
vs.
WILLIAM LINN BROWN and the Chesapeake and Delaware Canal Company. } In equity.

To the Chief Justice and Associate Justices of the Supreme Court of the United States, the petition of appeal of the above named defendant, William Linn Brown, respectfully showeth:

That on the fifth day of October, 1841, by a decree in the said court it was ordered that the exceptions to the masters' report be disallowed; and that there was due by the complainant, John Randel, junior, to your petitioner, five thousand six hundred and forty-nine dollars 64 cents, with interest from the fifth day of May, A. D. 1840, making, together, the sum of six thousand one hundred and thirty-six dollars, to be paid and satisfied by and out of the certificates in controversy and the proceeds thereof; and that the costs of the said suit, including the fees of the master's, should be divided between, and equally paid by, the said complainant and your petitioner. And your petitioner is advised that said decree is erroneous, and ought to be reversed, and hereby enters this his appeal therefrom. Wherefore, he respectfully prays that the said decree of the said circuit court, and the proceedings on the said cause, may be

certified, transmitted and sent to your honorable court, and filed and docketed with the clerk thereof, without delay; and that the said decree may be reversed, and that your honorable court may proceed therein as the case may require. And the appellant, as in duty bound, will pray, &c.

WM. LINN BROWN,
CADWALADER,
For Tyson and self, solicitors and counsel of appellant.

Dated this 15th day of *October, A. D.* 1841.

JOHN RANDEL, junior, *vs.* WILLIAM LINN BROWN. } Circuit Court, U. S.—In equity.

April Sessions, 1837.

Specification and assignment of causes of the appeal entered on behalf of the appellant, Wm. Linn Brown.

First. The court below erred in disallowing this appellant's exceptions to the report of the masters.

Second. The court below erred in confirming the masters' report, in that part thereof in which they state, or profess to state, the terms, consideration, and conditions of the transfer of the two certificates of debt referred to in the pleadings.

Third. The court below erred in confirming the report of the masters, that there was due to appellant, for the causes therein mentioned, the sum of five thousand six hundred and forty-nine dollars and sixty-four cents, when a much larger sum, to wit, the amount claimed in the answer, was due to him therefor.

Fourth. The court below erred in confirming the said report that the sum of two thousand dollars, with interest, was not due to the appellant, in addition to the sum of five thousand six hundred and forty-nine dollars sixty-four cents, reported to be due to him.

Fifth. The court below erred in not allowing to the appellant the interest on the said sum of five thousand six hundred and forty-nine dollars sixty-four cents, from January, one thousand eight hundred and thirty-four.

Sixth. The court below erred in not allowing the respondent the said sum of two thousand dollars, with interest, in addition to the said sum of five thousand six hundred and forty-nine dollars and sixty-four cents.

Seventh. The court below erred in not dismissing the complainant's bill.

Eighth. The court below, so far as they have decreed in complainant's favor, have proceeded without allegations in the bill or proofs in the cause to sustain the decree.

Ninth. The court below erred in rendering a decree in favor of complainant, to any extent, because the proofs on which the same is

founded did not present a case conformable to the allegations of the bill.

Tenth. The court below erred in decreeing that the respondent should pay one half of the costs.

Eleventh. The court below erred in not decreeing that the complainant pay the costs.

Twelfth. The decree is in other respects erroneous, defective, informal, and insufficient.

CADWALADER,

For Tyson and self, solicitors and counsel for appellant.

Lodged in clerk's office, October 16, 1841.